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PART I

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Kerala Gazette No. 18 dated 3rd May 1983.
PART I

GOVERNMENT OF KERALA

Home (B) Department

ERRATUM

No. G. O. MS. 39/83/Home. *Dated, Trivandrum 18th March* 1983.

In the Schedule to the notification G. O. MS. No. 134/82/Home dated the 27th October, 1982, published as S. R. O. No. 1363/82 in the Kerala Gazette No. 45 dated the 16th November, 1982, in the entries in column (2) against Children's Court, Kottayam District in column (1), for "2. Jnaneswaran Pillai, Advocate, Kottayam" read "2. Njaneswaran Pillai, Advocate, Puthumannil House, Erathuvadakara P. O., Manimala."

By order of the Governor,

N. Kaleeswaran,
Special Secretary to Government.

Kerala Gazette No. 18 dated 3rd May 1983.
PART I

GOVERNMENT OF KERALA

Labour (A) Department

NOTIFICATION

G. O. (Rt.) No. 3/83/LBR. *Dated, Trivandrum, 1st January 1983.*

The award of the Labour Court Quilon in respect of the dispute between The President, Service Co-operative Society No. 1740, Cheppad, Kannimel, via Haripad and their workmen represented by the Alleppey District Co-operative Employees Association, Karthikappally, received by Government on 16-12-1982 is hereby published under section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947).

By order of the Governor,
K. SIVADASAN,
Deputy Secretary to Government.

In the Labour Court, Quilon

Dated, this the 7th day of December, 1982.

Present:

SHRI T. V. KUNHAHAMAD B. A., B. L.,

Presiding Officer

In

INDUSTRIAL DISPUTE No. 67/70

Between

The President, Service Co-operative Society No. 1740, Cheppad, Kannimel, via, Haripad.

And

The Workman of Shri P. Damodaran Nair, represented by the Alleppey District Co-operative Employees' Association, Karthikappally.

Representations:—

Sri M. Radhakrishnan Nair, Advocate, Alleppey. .. For *the Management*

Sri P. Narayanan Nair, Advocate, Alleppey. .. For *the Union.*

AWARD

The issue referred for adjudication by the Government of Kerala as per G. O. (Rt) No. 960/70/LHWD dated 26-6-1970 is the discharge of Shri P. Damodaran Nair, Secretary, Service Co-operative society Ltd., No. 1740, Cheppad.

(2) The award passed by my Learned Predecessor on 25th of May, 1978 was challenged before the High Court in O. P. No. 4320/79 L. Even previously the parties had taken the matter to the High Court on two other occasions. O. P. 4320/78 was allowed by the High Court and the matter was remitted back to this court for hearing and disposal in accordance with law and in the light of the observations made in the judgment. The facts of the case have been summarised in paragraph 2 of the judgment of the High Court which is extracted below :—

(2) "The Petitioner, which was a Co-operative Society functioning under the Travancore-Cochin Co-operative Societies Act, 1951, appointed the first respondent as its Secretary. The Petitioner Society was converted into a Service Co-operative Society. By virtue of the rules framed under the Travancore-Cochin Co-operative Societies Act, the Secretary of a Service Co-operative Society had to possess certain qualifications. Since the Petitioner-Society felt that the first respondent did not possess the necessary qualifications, the society relieved him from the post of Secretary and offered him the post of clerk for which he had the necessary qualifications. The first respondent declined to accept that offer. Proceedings were initiated under the Industrial Disputes Act. The matter was referred to the Labour Court, Quilon. The main ground upon which the first respondent challenged his reversion was that he was given exemption from acquiring the necessary qualifications by Ext. P2 Circular issued by the Registrar of Co-operative Societies. The Labour Court, which is the second respondent before me, accepted the contention of the first respondent-employee and passed an award in his favour, whereby the order passed by the society relieving him was quashed and the society was directed to reinstate the first respondent as Secretary with full back wages. Ext. P1 is the copy of the award. The petitioner is challenging the validity of Ext. P1."

3. The first question to be considered is whether the workman was qualified to hold the post of the Secretary and if not whether the change in qualifications was made after his appointment. In this context, paragraph 2 and 3 of the replication filed by the Union which is extracted below has to be looked into para. 2.

Sri P. Damodaran Nair was the Secretary of the society from 1961. The society was converted into a Service Co-operative Society in 1967 and he continued to be its Paid Secretary till 20-3-1969. All averment to the contrary are denied.

It is true that Sri P. Damodaran Nair did not possess, all the qualifications prescribed for appointment as Secretary to a new comer but this restrictions did not apply to existing incumbute, as per Co-operative Registrar's Circular dated 9-11-1968, No. FLD/4/22777/67. The said circular exempted all the existing secretaries with 3 years or more from qualifications provided the respective societies were satisfied with their conduct.

4. It is clear from the above, that the workman did not possess the requisite qualifications and that he was banking on thee exemption allowed by the Registrar. As a matter of fact to begin with the workman was not the Paid Secretary. He was only an elected Secretary. Th workman has stated from the witness box, that he has failed from the nineth standard which is equivalent to Malayalam Higher. The workman has no case that a pass in the 8th standard examination is sufficient qualification for appointment as Secretary of the Society. On the other hand MW1 has stated that a pass in the Co-operative training examination is obligatory for appointment as Secretary of a Service Co-operative Society. Therefore one cannot but conclude that the workman was not having the prescribed qualification for appointment as Secretary.

5. The Society was converted in to a Service Co-operative Society in the year 1967. Before that conversion, the workman was the elected Secretary of the Society. The workman was admitted in cross-examination that, until conversion of the society the Secretary used to be elected. For appointment as Secretary of a Service Co-operative Society the candidate should have passed the S. S. L. C. examination and should have successfully undergone the Co-operative Training. Both those qualifications are not possessed by the workman. As a matter of fact, the Society should have dispensed with the services of the workman when it was converted into a Service Co-operative Society, since he no longer possessed the qualifications necessary for appointment as Secretary of a Service Co-operative Society. The change in qualifications if at all resulted from the conversion of the society. In fact it cannot be said that there has been a change in the qualifications. When the nature of the society was changed the former institution ceased to exist and therefore the employees of the predecessor society had to be absorbed in suitable positions or retrenched. In the present case, instead of sending out the employees the society has chosen to continue them in service. In the circumstances, I conclude, that the workman was never qualified to hold the post of Secretary and there was no change in qualifications as such.

6. The next aspect to be considered is regarding the scope of sub-rule 4 of Rule 29, which provides that the Registrar may by general or special order exempt a society from this rule. It was argued on behalf of the management, that the rule authorises the Registrar to exempt a society from the operation of the rule and it does not cloth him with authority to exempt a particular employees. The High Court has directed this court to consider this contention also. It is clear from a reading of the sub-clause in question,

that the Registrar can exempt only a society or a class of societies from the operation of the rule and he cannot exempt individual employees. Even then the management cannot succeed on this point. The order of the Registrar reads as follows "In the circumstances persons working as Paid Employees in Co-operative Societies with a minimum service of 3 years will be permitted to continue in their respective posts even though they may not be fully qualified provided the respective societies are satisfied with their work and conduct". It was argued that the Registrar has used the power conferred on him to exempt a society or a class of societies for the purpose of exempting 'persons working as Paid Employees in Co-operative Societies'. On a plain reading of the order it may appear that the Registrar has gone beyond his powers and has exempted individual workmen and not the societies as such. But the concluding portion of the order would indicate that the exemption granted is to the societies and not to the individual workmen. If the societies are satisfied with the work and conduct of the employees who have put in service for a period of three years, the concerned society can exempt the employee from the operation of sub-rules 1 to 3 of rule 29. Earlier portion of the order Ext. W2 would also support the above view. It is stated "normally qualified persons should be necessitated for appointment as paid employees of the Co-operative Societies, but whereever societies feel that their present employees are quite equal to the task on account of their experience and conduct, there is justification for their demand for such persons being appointed with exemption from the prescribed qualifications being turned down summarily". Therefore the Registrar had thought it fit to grant exemption to the societies from the operation of sub-rules 1 to 3 of rule 29 and to allow them to continue in service employees who have not acquired the requsite qualification if they have put in 3 years of service and if the societies are satisfied about their work and conduct. In the circumstances, it cannot be said, that the Registrar had exempted individual employees and he has thereby acted in excess of the powers conferred under sub rule 4 of Rule 29.

7. The Society has no case that they were not satisfied with the work and conduct of the workman. The President of the Society has admitted that on 14-10-1967 the Board consisting of himself and others had passed a resolution deciding to continue the workman as Secretary and that resolution was sent to the Registrar who did not send any reply. The Managing Committee of the Society was satisfied with the work and conduct of the workman. As per Ext. W2 the order issued by the Registrar the society had the power to exempt an employee who had put in 3 years of service from the operation of the rule relating to qualifications. The only condition was that the society should be satisfied about the work and conduct of the individual work. The Managing Committee would not have passed the resolution above referred to if they were not satisfied about work and conduct of the workmanman. Thus the workman had satisfied all the conditions for grant of exemption by virtue of Ext. W2. Still he was discharged from service.

8. It is clear from the foregoing, that the workman was entitled to continue in service and that he was wrongfully discharged. The workman has completed 62 years of age and therefore there cannot be an order to reinstate him in service. Since he was wrongfully discharged he has to be adequately compensated. I feel that an order for payment of half the wages from the date of discharge till the date of superannuation would be sufficient to meet the ends of justice.

9. In the result, I pass an award, setting aside the order of discharge and directing the President of the Service Co-operative Society Limited No. 1740, Cheppad to pay half the back wages to Shri P. Damodaran Nair untill the date on which he completed 58 years of age.

10. This award shall came into force after expiry of one month from the date of publication of this award in the Kerala Government Gazette.

Dictated to the Confidential Assistant, transcribed and typed out by her, corrected and signed by me the 7th day of this the December, 1982.

T.V. Kunhahamed,
Presiding Officer.

Appendix

Witness examined on the side of the Association :

W. W.1 Mohanan Pillai
W. W.2 P. Damodaran Nair

Witness examined on the side of the Management:

M. W.1 Bhaskaran Pillai

Exhibits marked on the Side of the Association:

W. 1 Series. (10 in number) Conciliation notices of the District Labour Officer, Alleppey.
W. 2 Copy of Registrar's Circular No. PLD. 4/22777/67 dated 9-1-1968.
W. 3 Letter dated 17-3-1969 from the President, Cheppad, Kannimmel Service Co-operative Society Ltd. No. 1740, P. O. Cheppad, to the Secretary.
W. 4 Copy of the Inspection note of Sri V. Bhaskaran Nair, Assistant Registrar (Co-operative Societies), Alleppey.
W. 5 Order dated 26-3-1969 of the President, Cheppad, Kannimmel Service Co-operative Society Ltd. No. 1740, P. O. Cheppad.
W. 6 Letter No. 14123 dated 27-2-1970 of the Executive Officer, The Alleppey District Co-operative Bank Ltd., H. O. Alleppey.

Exhibits marked on the side of the Management:

M. 1 Resolution No. 95 in the Minutes Book Page No. 52.
M. 2 Resolution No. 170 in page No. 57 of the Minutes Book.
M. 3 Bye-laws of the Service Co-operative Ltd., No. 1740 Cheppad, Kannimmel.

GA.12/V.

Kerala Gazette No. 18 dated 3rd May 1983.
PART I

GOVERNMENT OF KERALA

Labour (A) Department

NOTIFICATION

G.O.(Rt.) No.4/83/LBR. *Dated, Trivandrum, 1st January 1983.*

The award of the Labour Court, Quilon in respect of the dispute between Sri K. V. Damodaran, Proprietor, Swapna Motor Service, Kumarapuram, Pothappally, Haripad and their workman represented by The Secretary, Alleppey District Motor Workers' Union, Haripad received by Government on 18-12-1982 is hereby published under section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947).

By order of the Governor,

K. SIVADASAN,
Deputy Secretary to Government.

In the Labour Court, Quilon

Dated, this the 7th day of December, 1982.

Present:

SHRI T. V. KUNHAHAMED B.A., B.L.,
Presiding Officer

INDUSTRIAL DISPUTE No. 86/78.

Between:

Shri K. V. Damodaran,
Proprietor,
Swapna Motor Service, Kumarapuram,
Pothappally, Haripad.

And

The Secretary,
Alleppey District Motor Worker's Union,
Harippad.

Representations:—

N. Unnikrishna Panicker, B. A. B. L., Advocate, Alleppey. .. For *the Management*

K. P. Chellappan Nair, B. A., B. L., Advocate, Alleppey. .. For *the Union.*

AWARD

1. This is an Industrial dispute referred for adjudication by the Government of Kerala as per G. O. (Rt.) No. 1170/78/L&H dated 21-7-1978. The issue referred for adjudication is "the dismissal of Sri V. Raghavan, Driver Swapna Motor Service, Haripad".

2. The parties entered appearance. The Union filed a claim statement raising the following contentions: Even before the present owner Shri K. V. Damodaran became the proprietor of the Swapna Motor Service the workman Shri V. Raghavan was working as a driver. The management was not paying the minimum wages and other benefits. Therefore the union placed demands before the management. A settlement was arrived at and an agreement was executed 20-6-1975. But the management did not implement the agreement. Shri V. Raghavan (hereinafter referred to as the workman) was an active member of the Union. He has taken active part in placing the demand for redressal of the grievances. The union has moved the conciliation officer for taking steps against the management for non-implementation of the settlement. Due to that enmity certain false and frivilous accusations were made against the workman and he was dismissed. The domestic enquiry was a farce. The enquiry conducted by the Enquiry Officer is only an eye-wash. The Enquiry officer's findings are perverse and illegal. The witness examined by him had nothing to do with the establishment. The Union wants the workman to be reinstated.

3. The management filed a counter statement raising the following contentions :— The Union of which the workman was a member was very conscious to bargain for the legitimate benefits due to the workers and always the management has paid all lawful demands made by the Union in due time. The workman was never an Office Bearer of the Union. The demands were laid before the management either by the President or Secretary of the Union. The workman was not a protected worker under the Trade Union Act. The Management had no enmity against him. The allegations made by the management against the workman are true and the Enquiry Officer was an independent one. The Enquiry Officer had given sufficient opportunity to the workman to adduce evidence in rebuttal of the allegations. The workman had not impeached the credibility of the witnesses examined before the Enquiry Officer. The material evidence on record as well as evidence adduced before this court would show that the disciplinary proceedings initiated against the workman was justified,

4. My learned predecessor found that the Enquiry is vitiated and therefore posted the case giving the management an opportunity to adduce evidence in support of the action taken against the workman. The Preliminary order reads as follows :—

The above case arises out of a reference made by the Government of Kerala as per G. O. (Rt.) No. 1170/78/L&H dated 21-7-1978.

The issue referred for adjudication is "The Dismissal of Shri V. Raghavan, Driver, Swapna Motor Service, Haripad".

The Union representing the workman filed a claim statement raising the following contentions :— The managment was not paying to the workman their legitimate dues. Hence the Union made certain demands to the management. A settlement was reached on 20-6-1975. The management did not implement it. Sri. Raghavan is an active member of the Union. In order to wreak vengeance, the management put up certain false allegations against Sri. Raghavan and dismissed him from service. The enquiry conducted in this case was not proper. The Enquiry Officer had not based his findings on evidence. The dismissal of the workman is illegal and he should be ordered to be reinstated with back wages.

The management filed a counter statement contending as follows:— Sri Raghavan was not an office bearer of the union. He had never acted on behalf of the union in working demands. The allegations levelled against the workman were properly enquired into. The Enquiry Officer had given reasonable opportunity to the workman to lead evidence. He had acted without bias. The action taken against the workman is proper and valid.

The management examined the Enquiry Officer M. W. 1. His report Ext. M1 and the enquiry records Ext. M2 series were marked.

The question to be considered at this stage is whether there was a proper enquiry proceeding the dismissal of the workman.

The points:— It is seen from Ext. M1 that there were five charges against the workman. It is also seen from Ext. M1 and M2 that the Proprietor was not examined as a witness before the enquiry officer. In Ext. M1 the names of witnesses who were examined are stated. The Proprietor is not one of them. That fact is admitted by the Enquiry Officer, but he states that the statement of the proprietor was taken and that the workman was given an opportunity to cross-examine him on the statement. There is nothing in Ext. M1 to show that such an opportunity was given. Further the procedure of taking a statement of a witness in advance is improper. He should have been examined in the presence of the delinquent.

It is stated in Ext. M1 that there was no evidence to prove charge No. 5. Still the Enquiry Officer states as follows:— "Eventhough there is no evidence to prove point No. 5, from the available evidence I am to come to the conclusion, that the proprietor has sufficient grounds to believe that what is alleged in point No. 5 can take place". The enquiry officer further stated in his evidence that he gave an adverse finding regarding charge No. 1 because the workman did not prove, that he had not committed the delinquency in question though there was no independent evidence regarding the charge. This is an erroneous approach. In my

opinion, the above facts show that the Enquiry Officer has approached the evidence from a wrong angle casting the burden of disproving the charge on the workman. This fact vitiates the enquiry. I am therefore of opinion, that the enquiry was not properly conducted. The management should be given an opportunity to support the action taken against the workman. The case will be posted for adducing such evidence.

5. MW1 and WW1 were examined.

At the out set a statement has to be made regarding the progress of this case. On 26th of May, the case was adjourned to 17th of June, since the witnesses for the management were not present. On 17th of June, the management were not present. On 17th of June, the management and their advocates were absent and the case was adjourned as a last chance to 15th of July. On 27th of July the case had to be adjourned due to the personal inconvenience of the advocate for the management. On 29th of July, the first witness for the management was examined. On 11th of August Shri Ram Mohan Das, Advocate for the Union was out of station. On 25th of August, the advocate for the management was reported to be unwell. The party appeared in person and filed an application for adjournment stating that his advocate and his witnesses are unwell. The case was adjourned to 26th of August. On 26th of August, the management filed an application stating that because of his advocate's illness he cannot be examined and his witnesses Raghavan Kaimal and Kuttappan Nambi are laid-up and another witness Manoharan is out of India, and that, the case should be adjourned. The party would not give the nature of the illness of his advocate and witnesses. Therefore the application was rejected. The first witness for the worker was examined and the case was adjourned to 17th September for arguments. On 17th of September, the management filed an application stating that his advocate has gone to Delhi. The application was dismissed. Arguments were heard.

6. MW1 another driver employed by the management has given evidence regarding the misconduct. On 22nd of January, 1975 the witness had at about 4.30 a. m. attempted to take out the Bus from its shed at Haripad. Then the workman obstructed him. The witness and delinquent remained in the shed up to 9 a. m. arguing with each other. On that day the bus did not ply. The witness claims that he was working as driver of the bus from 23rd January to 26th of January. On 26th of January 1975 when the bus reached a place called Tanappady Junction the workman obstructed the bus and forced the witness who was driving the same to get out. The workman occupied the drivers seat and started the bus and he took the bus to a compound at Narakathura Junction and deflated three tyres. The witness stated in cross-examination that before this there were no agitations in Swapna Motors, that on 22nd of January, it was the workman's turn to drive the bus that he went to take the bus since the proprietor asked him to go that there was a quarrel between the proprietor and the workman and therefore it was that the proprietor asked him to

go that, it was after the settlement of the dispute between the management and the workman through the interference of the Union that the bus was taken out on 22nd that, after the 22nd the workman was not allowed to work and that, after the 22nd the union had not obstructed the bus. The witness admitted that, union workers were also there among the person who obstructed the bus on the 26th. The witness does not know whether this dispute has been settled between the parties. The witness admitted that, the statement that the matter was compromised on 14th April, 1975 and that Raghavan was allowed to work from 15th April, onwards is true. When questioned further the witness stated that after the 26th the police interfered in the matter and the bus was removed. The witness does not know as to what was the basis for the understanding based on which the bus was removed. The witness denied the suggestion that on 26th of January, the workman and his colleagues had picketed the bus. As against this the workman who was examined as WW1 stated that from 1965 onwards he was a driver in the Sheeja Motors owned by K. Balan that in 1975 the present owner purchased the bus with three workers including himself that he worked under the management for about 8 or 9 months, that there was an agreement between the union and the management regarding the payment of minimum wages that even after the agreement, the management did not pay the enhanced wages, that he complained about non payment and it was after that allegations were made against him that on 23-1-1975 there was a dispute about sending George in his place, that the matter was settled by the interference of the Union and again employment was denied to the workman and the union started an agitation and picketing and that he has not done anything other than participate in the agitation organised by the union. The workman wants himself to be reinstated with back wages. This witness was not cross-examined by the management.

7. It has to be seen whether charges levelled aginst the workman have been proved. MW1 has spoken about two instances. The first one was on 22nd of January. MW1 was obstructed by the workman when he attempted to take out the bus. It is more or less common ground that the matter was settled by the interference of the union. Having agreed to the compromise the management cannot initiate disciplinary action against the workman for the self same reason.

8. The next occurrence took place on 26th of January according to MW1 the workman had obstructed the bus forced him to get out and had driven the bus to a compound and had deflated the tyres. According to the workman he had only participated in the agitation sponsored by the union and he had not caused damage to the bus. The workman has not

stated that the allegation that he had driven the bus from Danapadi Junction to a conpound in Narakathura Junction and had left it there is not truc. The question for consideration is whether the above Act would amount to misconduct or whether the workman can escape from resposibility for obstructing the bus and taking it to another place other than its destination thereby causing hardship to the passengers.

9. MW1 as well as WW1 have spoken about occurrance that took place on 26th of January. There are only minor differences in the versions given by both. According to the workman he had taken part in the agitation sponsored by the union and the picketing of the bus was only a part of the agitation. MW1 has also admitted about the presence of the Union workers in the group of persons who had obstructed the bus. The evidence given by MW1 that the workman had forced him out of the driver's seat and had taken the bus to a compound in Narakathura Junction stands unrebutted. The workman seems to take shelter under the union agitation for his abovementioned Acts. Even if authorised by the union the workman cannot commit acts which would amount to crimes. In the instant case of the workman had used criminal force against the driver by pushing him out of the driver's seat and had taken the bus which was full of passengers to a place other than its destination. The workman has to take the responsibility for his abovementioned acts. I would therefore hold that the misconduct alleged against the workman in so far as it related to the incidents which took place on 26th of January, 1975 is true.

10. The management has not succeeded in proving all the charges other than the charge relating to the incident which took place on 26th of January.

11. The next question for consideration is whether the punishment of dismissal is justified. There is evidence to show that there were disputes between the workers and the management regarding the wages and other emoluments and the Union had started an agitation. The workman is an active member of the union and the acts of misconduct were done by him as part of the agitation sponsored by the Union. I cannot subscribe to the view that anything can be done under the guise of trade Union activity. At the same time the extreme penality of dismissal cannot be imposed for slight excesses. I would therefore hold that the punishment of withholding of hackwages would be sufficient to meet the ends of justice.

In the result I pass an award directing reinstatement of Shri V. Raghavan, Driver, Swapna Motor Service, Haripad, but without backwages.

Dictated to the Confidential Assistant, transcribed and typed out by her, corrected and signed by me the 7th day of the December, 1982.

T. V. KUNHAHAMED,
Presiding Officer.

Appendix

Witness examined on the side of the Workman :

W. W. 1—V. Raghavan.

Witness examined on the side of the Management :

W. W. 1—K. V. Gopalakrishnana Pillai.
M. W. 2—K. V. George.

Exhibits marked on the side of the Workman :

Nil.

Exhibits marked on the side of the Management :

Ext. M1—Enquiry Findings.
Ext. M2 series Enquiry records.

Kerala Gazette No. 18 dated 3rd May 1983.
PART I

GOVERNMENT OF KERALA

Labour (A) Department

NOTIFICATION

G. O. (Rt.) No. 92/83/LBR. *Dated, Trivandrum, 24th January 1983.*

The award of the Labour Court, Quilon in respect of the dispute between Andoorkonam Service Co-operative Society Limited No. 3127, represented by the Secretary, and their workmen K. Sasidharan Nair, Sathinilayam, Andoorkonam P. O., (via) Kazhakuttom, Trivandrum, received by Government on 18-1-1983 is hereby published under section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947).

By order of the Governor,
K. SIVADASAN,
Deputy Secretary to Government

In the Labour Court, Quilon

(Dated, this the 6th day of January, 1983)

Present :

SHRI T. V. KUNHAHAMED, B.A., B. L.
Presiding Officer

In

INDUSTRIAL DISPUTE No. 43 OF 1979

Between

K. Sasidharan Nair,
Sathinilayam,
Andoorkonam, P. O.,
(via.) Kazhakuttom,
Trivandrum Taluk. .. *Petitioner*.

Andoorkonam Service Co-operative
Society Limited No. 3127,
Represented by the Secretary, .. *Counter petitioner*

Representations:—

M. I. Ravikumar,
Advocate,
Vanchioor,
Trivandrum .. For *the Petitioner*

Advocate K. P. Rajendran. .. For *the Opposite Party*

GA.17/V.

AWARD

This is an Industrial Dispute referred by the Government of Kerala as per G. O. (Rt.) No. 1595/L&H dated 8-11-1979. The dispute referred for adjudication relates to the dismissal of Shri K. Sasidharan Nair, Salesman of the Andoorkonam Service Co-operative Society Limited No. 3127, Andoorkonam P. O. Shri Sasidharan Nair died during the pendency of the dispute. His widow and children were impleaded on his behalf. The matter was settled and a joint application for recording the compromise was filed by the widow and the Andoorkonam Service Co-operative Society. The joint application shows that a sum of rupees 1,500 has been paid by the Society to the widow. The compromise is accepted and an award is passed in terms thereof.

The joint application which is extracted below shall form part of the award.

കൊല്ലം ലേബർ കോടതി മുൻപാകെ 1979 ഐ.ഡി. നം 43 ടി നമ്പരിൽ ഹർജികക്ഷി കെ. ശശിധരൻ നായരുടെ അവകാശിയും കൂടുതൽ ഹർജിക്കാരിയുമായ മാധവി അമ്മ ലളിതമ്മയും അണ്ടൂർകോണം സർവ്വീസ് സഹകരണ സംഘം നമ്പർ 3127 നു വേണ്ടി പ്രസിഡൻറും കൂടി ബോധിപ്പിക്കുന്ന രാജിഹർജി.

ടി നമ്പർ സംഗതി കൂടുതൽ ഹർജിക്കാരിയും എതൃകക്ഷിയും തമ്മിൽ പറഞ്ഞൊതുങ്ങി എതിർകക്ഷിസംഘത്തിൽനിന്നും ഇന്നേ ദിവസം ആയിരത്തി അഞ്ഞൂറു രൂപ കൂടുതൽ കക്ഷിയും മരിച്ചുപോയ കെ. ശശിധരൻ നായരുടെ അവകാശിയുമായ മാധവി അമ്മ ലളിതമ്മയ്ക്ക് രസീതും പ്രകാരം രൊക്കം കൊടുത്തിരിക്കുന്നു. തന്നിമിത്തം ഈ നമ്പർ കേസ് തുടർന്നു നടത്തുവാൻ അപേക്ഷയില്ലെന്ന് കൂടുതൽ കക്ഷി സമ്മതിച്ചിരിക്കുന്നു. എതൃകക്ഷിസംഘത്തിൽനിന്നും ടി ശശിധരൻ നായരുടെ അനന്തിരാവകാശികൾക്ക് മേലാൽ യാതൊരുവിധ ബാദ്ധ്യതകളും ഉണ്ടായിരിക്കുന്നതല്ല.

അതിനാൽ ഈ രാജിപ്രകാരം ഈ നമ്പർ ഫയലിൽ കുറവുചെയ്തു വിധി ഉണ്ടാകണമെന്ന് അപേക്ഷിക്കുന്നു.

ഒപ്പ്
ഹർജിക്കാരി

ഒപ്പ്
അഡ്വക്കേററ്

ഒപ്പ്
എതൃകക്ഷി സംഘത്തിനുവേണ്ടി പ്രസിഡൻറ്

ഒപ്പ്
അഡ്വക്കേററ്

5-1-1983.

(ശരിപ്പകർപ്പ്)

Pronounced in open court this the 6th day of January, 1983.

This award shall come in to force on the expiry of thirty days from the date of its publication in the Government Gazette.

T. V. KUNHAHAMED, B.A., BL.,
Presiding Officer.

GOVERNMENT OF KERALA

Labour (A) Department

NOTIFICATION

G. O. (Rt.) No. 107/83/LBR. *Dated, Trivandrum, 28th January 1983.*

The award of the Labour Court, Quilon in respect of the dispute between The President, Kalarcode Service Co-operative Society Limited, No. 1813, Sanathanapuram P. O. Alleppey-3 and their workman P. Madhavan Nair, Chempakasseril House, Kalarcode ward, Sanathanapuram P. O., Alleppey-3 received by Government on 7-1-1983 is hereby published under section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947).

By order of the Governor,

K. SIVADASAN,
Deputy Secretary to Government.

In the Labour Court, Quilon

(Dated, this the 27th day of December, 1982)

Present:

SHRI T. V. KUNHAHAMED, B. A., B. L.,
Presiding Officer

INDUSTRIAL DISPUTE No. 28/80

Between :

P. Madhavan Nair,
Chempakasseril House,
Kalarcode Ward
Sanathanapuram P. O.,
Alleppey-3. — *Petitioner (Workman)*

And :

The President,
Kalarcode Service Co-operative Society Ltd., No. 1313,
Sanathanapuram P. O.,
Alleppey-3. — *Opposite party (Management)*

Representations :—

K. P. Chellappan Nair, B.A., B.L., Advocate, Alleppey. — For *the Petitioner*

C. K. Parameswara Panicker, Advocate, Alleppey. — For *the Opposite party*

AWARD

Removal from service of Sri. P. Madhavan Nair, Clerk-cum-Salesman of Kalarcode Service Co-operative Bank Limited No. 1813, Kalarcode, Alleppey-3 is the issue referred for adjudication by the Government of Kerala as per G. O. (Rt.) No. 693/80/LBR dated 20th May, 1980.

Sri. P. Madhavan Nair shall be referred to as the workman and the Kalarcode service Co-operative Bank Limited No. 1813, Kalarcode, Alleppey-3 shall be referred to as the management.

The workman was employed as the salesman of the management from 1st May, 1962. While so he was kept under suspension as per proceeding dated 25th January, 1965. The ground given in the order of suspension was deficiency in stock. The management did not hold any enquiry regarding alleged irregularities. As per Resolution No. 67 dated 28th November, 1965, the Board of the Management decided to terminate the service of the workman since he was working as the Paid Secretary of another Co-operative Society. The case of the workman is that the resolution regarding termination of service was not communicated to him. The workman has come forward with a case that he had made represenations to the management for reinstating him in service. For more than 10 years the workman did not initiate any proceedings against the management. In 1976 he filed an application under section 33 C (2) of the Industrial Disputes Act claiming arrears of subsistance allowance and salary. The case of the workman is that he became aware of the order of termination only during the pendency of the proceedings under Section 33 C (2). This court upheld the contention of the management that the services of the workman were terminated on 20th November, 1965 and allowed the workman subsistance allowance till that date. The case of the workman is that he was not working as Paid Secretary of another Society that the management has not held an enquiry based on the charges mentioned in the order of suspension and therefore he is entitled to be reinstated. The case of the management is that the workman was employed as Paid Secretary of another establishment and therefore the management was justified in removing him from service and, that the Audit Report for the relevant period establishes the case of the management, that there is deficiency in stock. Exts. M2 to M4 and W1 to W2 were marked and M1 & M2 and WW1 were examined.

4. There has been inordinate delay in moving the authorities for referring the matter to this court. It was contended on behalf of the Management that the reference should be answered against the workman on the simple ground that there has been extraordinary delay in putting forward the claim. But the Learned Counsel for the Management has not pointed out any provision of law in support of the said contention. Therefore I hold that even though there has been a delay of more than 10 years, in moving the government for referring the matter to this Court, the referrence cannot be thrown out on that ground.

Exhibit M1 the order of suspension shows the reason for the suspension as follows:—

"സംഘത്തിൽ നിന്നും 21-12-1965-ൽ റഫറൻസ് നമ്പരായി 266/64-65 നമ്പരായി സെയിൽസ്മാൻ പി. മാധവൻ നായർക്ക് അയച്ച ലററും അതിലേയ്ക്ക് ടിയാൻ നൽകിയ സമാധാനവും പരിഗണിച്ച്, സ്റേറാക്ക് യു. ജി. ചെല്ലപ്പൻപിള്ളയെ ഏൽപ്പിക്കുവാൻ സംഘത്തിൽ നിന്നും സെയിൽസ്മാനെ അധികാരപ്പെടുത്തിയിട്ടില്ല. മുൻ സ്റേറാക്കും പിന്നീടു വാങ്ങിച്ച വളവും സെയിൽസ്മാൻെറ സൂക്ഷിപ്പിലാണ്. ടിയാൻെറ സമാധാനവും തൃപ്തികരമല്ലാത്തതിനാലും എല്ലാ ചാർജ്ജുകൾക്കും സമാധാനം പറയുന്നില്ല. അതിനാലും ബോർഡിൻെറ ദൃഷ്ടിയിൽ ടിയാൻ വീഴ്ചക്കാരനാണെന്ന് കാണുന്നതിനാലും മാധവൻ നായരെ സെയിൽസ്മാനായി ജോലി തുടരാൻ അനുവദിക്കുന്നതിന് ഈ സംഘത്തിൻെറ താൽപര്യത്തിന് ഹാനികരമായിട്ടുള്ളതിനാൽ ഇന്നുമുതൽ ടിയാനെ ജോലിയിൽ നിന്നും ഇനിയൊരു തീരുമാനം ഉണ്ടാകുന്നതുവരെ സസ്പെൻറു ചെയ്യുവാൻ തീരുമാനിച്ചിരിക്കുന്നു. 23-1-1965 വരെ ടിയാന് ചെല്ലുവാനുള്ള ശമ്പളം ചാർജുകൾക്കും സമാധാനം വന്നശേഷം ചെലവെഴുതി കൊടുക്കുന്നതിനെപ്പററി നിശ്ചയിക്കാമെന്നും തീരുമാനിക്കുന്നു. വളംഡിപ്പോയും ചാർജും സെക്രട്ടറിയെ ഏൽപ്പിക്കുവാൻ സെയിൽസ്മാനോടു നിർദ്ദേശിക്കുവാനും തീരുമാനിച്ചു. ഈ തീരുമാനപ്രകാരം താങ്കൾ 24-1-1966 മുതൽ സസ്പെൻഷനിലാണെന്ന് ഞാൻ ഇതിനാൽ അറിയിക്കുന്നു".

5. It is obvious from the above that before the workman was kept under suspension the Managing Committee had given him an opportunity to show cause and he had submitted his explanation. Possibly the workman had challenged the stock verification itself. Hence the observation that the stock was taken in the presence of the salesman. The workman appears to have put forward a defence that he had entrusted the stock with one U. G. Chellappan Pillai. Hence the observation that the society had not authorised him to entrust the stock with Chellappan Pillai.

6. After communicating the order of suspension the Management appears to have kept quite. Subsequently, the Managing Committee decided to terminate the services of the workman on the ground that he is working as the Paid Secretary of another Institution. Exhibit M2 is the Resolution.

7. It was argued by Sri P. Narayanan Nair, Learned Counsel for the Management that even though no enquiry was held it is open to the Management to adduce evidence before this court, and prove the charges levelled against the workman for the first time before this Court He has relied on some of the observations of their Lordships of the Supreme Court in the decision reported 1973 1 LLJ, 278 (The Workmen of M/s Firestone Tyres & Rubber Co. of India (Pvt.) Ltd. and The Management and others. As a matter of fact no authority is required for the position that it is open for the management to adduce evidence for the first time before the Labour Court and prove the charges against the workman. It has already been seen that the order of suspension mentions the charges of deficiency in stock while the order of termination is passed on the basis that the workman is employed as Paid Secretary of another Institution. No serious attempt was made to establish that the workman was employed as Paid Secretary of another establishment, MW1 the then Secretary of the management has stated that the services of the workman were terminated since he was employed as

Secretary of Handmade Paper Industries Co-operative Society of Kalarcode. He stated in cross-examination that he does not remember, whether a show cause notice was issued to the workman before issue of Ext. M2 and whether his explanation has been obtained. The witness could not deny the suggestion that the workman was the Honourary Secretary of the Paper making Society from 1960 onwards. MW2 the present President of the Society has not stated anything about the workman's employment elsewhere. There is no documentary evidence also to show that the workman was appointed as the Paid Secretary of the Paper Making Society. The Management could have summoned the Paper Making Society to produce its account and minutes book. Those documents would have shown whether the workman was the Paid Secretary of that Institution and whether he was receiving remuneration for his services. The workman who was examined as WW1 stated that after the order of suspension he did not receive any communication from the society that he came to know about the decision to terminate his service only during the pendency of CP 71/76 an application filed by him for arrears of wages and subsistence allowance, that no enquiry was conducted by the management that he was not given an opportunity to explain the charges levelled against him that he was a member of the Alleppey Handmade Co-operative Society and that he was the Honourary Secretary of that Society from 1960-1980, and that he should be reinstated. The witness admitted in cross-examination that he has not maintained records regarding the representation given by him praying for reinstatement and that it is not true to say that he was dismissed on valid grounds. It was not brought out in cross-examination of WW1 that he was working as the Paid Secretary of the Handmade Paper Making Industries Co-operative Society. The management has neither pleaded nor proved that an employee working under the management should not accept any office under any other Co-operative Society. In this state of the evidence one cannot but hold that the management has not succeeded in showing that the workman was the Paid Secretary of the Handmade Paper Industries Co-operative Society. It follows that the termination from service on that ground cannot be justified.

8. The management has not thought it fit to adduce evidence regarding the charge of deficiency in stock mentioned in the order of suspension. It was represented by Shri P. Narayanan Nair, Learned Counsel for the management that the irregularities were committed by the workman more than 17 years ago and now it is not possible to prove the charge mentioned in the order of suspension. It has already been seen that the workman had offered some explanation for the deficiency in stock and the then managing committee had not accepted the excuses given by the workman. The management has also filed the Audit Report relating to the period. The management could have adduced some more evidence regarding the charge of misappropriation. But unfortunately no attempt has been made in this direction. The workman was not cross examined regarding the deficiency in stock. Probably the management knows that this charge is baseless or it feels that since the matters took place more than 17 years back it may not be possible to adduce evidence which would clinch the issue in favour of

the management. What ever it be the management has neither proved the charge of accepting employment under another society the reason given in the order of Removal as well as the charge of deficiency in stock, the reason given in the order of suspension. In the circumstances I hold that the charge have not been proved.

9. The next aspect to be considered is whether an order for reinstatement should be passed. It is represented on behalf of the management that at present there is no post of Salesman in the Society and therefore it will not be practicable to reinstate the workman. There was a further statement that the financial condition of the society is not good and it would be further jeoparadised if an order for reinstatement is passed. The workman was not willing to receive any compensation in lieu of reinstatement. The society has not produced before this court any documents to show that the post of salesman has been abolished. The workman has relied on Ext. W2 an advertisement which shows the number of members of the society as 3,000 and share capital as 1 lakh and 50,000 and deposit as rupees 1,00,000. This advertisement shows that the condition of the society is not as bad as has been attempted to be made out.

10. This Court has allowed the claim made by the workman for arrears of subsistance allowance up to 28th November, 1965 the date of termination. Afterwards the workman had worked in several institutions including the general Supplies Agencies of Alleppey. Since the workman was otherwise employed the question of back wages does not arise. I therefore conclude that the workman has to be reinstated without any backwages.

11. In the result I pass an award setting aside the removal from service of Shri C. P. Madhavan Nair, and reinstating him as Clerk-Cum-Salesman of Kalarcode Service Co-operative Bank Limited No. 1813, Kalarcode, Alleppey-3 without any back-wages.

This award shall came into force on the expiry of thirty days from the date of its publication in the Government Gazette.

Dictated to the confidential Assistant, transcribed by her, corrected and signed by me this the 27th day of December, 1982.

T. V. Kunhahamed,
Presiding Officer.

Appendix

1. *Witness examined in the side of the Management:—*

MW1. Sri Raghavan Nair formerly Honourary Secretary, Kalarcode Service Co-operative Society Limited No. 1813, Sanathanapuram.

MW2. Sri V. Venugopal, President do.

2. *Exhibits marked on the side of the Management:*

Exhibits M1. True copy of the letter dated 25-1-1965 from the Secretary, Kalarcode Service Co-operative Society Limited No. 1813, Kalarcode, addressed to Sri P. Madhavan Nair.

Exhibits M2. True copy of the Resolution No. 67 dated 28-11-1965 of the Society.

Exhibits M3. Copy of the order in C. P. 71/76 dated 1-3-1980 of the Labour Court, Quilon.

Exhibits M4. Copy of the Proceedings No. R. D. 2754/65 dated 15-5-1965 of the Audit Deputy Registrar of Co-operative Society, Trivandrum.

3. *Witness examined in the side of the Workman:*

W. W. 1. Sri P. Madhavan Nair, formerly Salesman, Co-operative Society Ltd. No. 1813, Kalarcode.

4. *Exhibits marked on the side of the workman:*

Ext. W1 Order No. 101 of 1972, of the Co-operative Inspector, Alleppey.

Ext. W2 Notice dated 15-10-1982 issued by the Secretary, Kalarcode Major Sree Mahadeva Temple, Kalarcode.

Kerala Gazette No. 18 dated 3rd May 1983.
PART I

GOVERNMENT OF KERALA

Labour (A) Department

NOTIFICATION

G.O. (Rt.) No. 93/83/LBR. *Dated, Trivandrum, 24th January 1983.*

The award of the Labour Court, Quilon in respect of the dispute between Shri K. A. Benadict, Contractor, Toddy Shop No. 68, Kunnel Veedu, Thuruvan Thekku Village, Shertallai and his workman Shri N. P. Viswambaran, Tapper, Toddy Shop No. 68, Thirumala, Shertallai Taluk received by Government on 15-12-1982 is hereby published under section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947).

By order of the Governor,
K. Sivadasan,
Deputy Secretary to Government.

In the Labour Court, Quilon

(Dated this the 8th day of December, 1982)

Present:

Shri T.V. KUNHAHAMED, B.A., B.L.,
Presiding Officer
In

INDUSTRIAL DISPUTE No. 22/81

Between :—

Shri N. P. Viswambaran,
Tapper,
Toddy Shop No. 68,
Thirumala,
Shertallay Taluk.

And:—

Shri K. A. Banadict,
Contractor, Toddy Shop No. 68,
Kunnel Veedu,
Thuravan Thekku Village,
Shertallai.

Representations :—

C. K. Parameswara Panicker,
Advocate, Alleppey

Gopinathan Nair,
Advocate, Alleppey. } For *the Union*

AWARD

1. Shri N. P. Viswambaran (hereinafter referred to as the workman) claims that he was an employee under K. A. Benadict, Contractor of T. S. No. 68 of Thuravan Thekku Village, Shertallai (hereinafter referred to as the management) and that the management has denied employment to him. The said denial of employment is the question referred to this Court by the Government of Kerala as per G. O. (Rt.) 1210/81/LBR dated 19th September, 1981.

2. The workman entered appearance and filed a claim statement raising the following contentions:—The workman was an employee of the shop from 1973 onwards and employment was denied to him on 1st May, 1980. The average emoluments of the workman was rupees 40 per day. The management had not framed charges against the workman. There was no enquiry also. The workman wants himself to be reinstated with full back wages and with all other amounts that is payable under the system prevalent in the trade.

3. The management filed a statement raising the following contentions:—

4. Shri Viswambharan was never a tapper attached to Shop No. 68. The Management was the contractor of the shop from 1980 to 81 and 81 to 82. There were only twelve toddy tappers attached to the shop and the workman was not one among them. The Union had issued cards to all the twelve toddy workers. The Management understands that the workman is tapper attached to another Toddy Shop and because of the personal spite of the shop keeper and one of the Union leaders this dispute has been raised.

5. It is clear from the pleadings that the sole point of controversy is whether the workman was an employee under the management. The workman has produced Ext. W1 to W4 and has examined himself and another witness. The management has not adduced any evidence.

6. The worker has given evidence that he was a tapper attached to Shop No. 68 for the period 1973 to 1980 and that when he took toddy to the shop on 1st May, 1980 it was not measured and thereafter employment was denied to him. He stated in cross-examination that denial of employment took place at the time of commencement of the shop for the year 1980-81, and that the card issued by the union up to that period is with him. The witness has proved Ext. W1 a statement issued by the Chief Welfare Fund Inspector regarding amount of Provident fund due from the Contractor in respect of N. P. Viswambharan of Shop No. 68. The witness denied the suggestion that when the management took over the shop there were only 12 workers and he was not a worker attached to the shop.

7. Shri K. A. Varghese Kutty brother of the Management and prior contractor has given evidence that when he was the contractor for the period 1978-79. Shri Viswambharan was an employed and even before the business was taken over by the management Viswambharan was working in

the shop and even after the expiry of his contract Viswambharan continued as an employee. The witness admitted in cross-examination that when he took over management there were 18 workers and by the time his contract period expired there were only 13 employees. The witness admitted that after 1979 he had nothing to do with any shop as per records. The witness volunteered that persons like him have formed an Association and the association used to take shops in the name of the President and until Benedict came he was conducting Shop No. 68 and his brother Paul was managing the shop. The reason given by the witness for attending to the affairs of the shop is that all the utensils including the cash box belong to him and he used to give the same on rent until the articles were purchased by Benadict the present contractor.

8. As against this the management has not come forward to give evidence that the workman was not an employee of the shop. It was argued that from the non production of the card issued by the union it should be presumed that the workman was not an employee of the shop. In this context reference has to be made to the evidence given by WW1 and WW2 regarding the practice prevailing in the trade. They have stated that, even when the contractors change the employees continue. That is to say, the employees are attached to the shop and when any particular individual takes over the shop for any year he takes, the shop with all the employees. There is no evidence to the contrary. It was not even suggested in cross-examination that, there is no such practice. Therefore one can proceed on the basis that practice is that even when the contractors change the employers attached to the shop continue. There is evidence to show that the workman was an employee of Shop No. 68. There is no evidence to show that his services were at any time terminated. Therefore, it has to be held that the workman was an employee of shop No. 68 and the management has denied employment to him.

9. In the result I pass an award directing reinstatement of Shri N. P. Viswambharan with all back wages.

Dictated to the Confidential Assistant, transcribed and typed out by her, corrected and signed by me the 8th day of this the December, 1982.

T. V. KUNHAHAMED,
Presiding Officer.

Appendix

Witness examined on the side of the union:—

W.W. 1 K. A. Varghese Kutty
W.W. 2 N. P. Viswambharan

Witness examined on the side of the Management:—

Nil.

Exhibits marked on the side of the union:—

Ext. W. 1 Receipt of the Toddy Welfare Fund.
Ext. W. 2. Statement of the Toddy Welfare Fund for 4/79.
Ext. W. 3. do. for 5/79

GOVERNMENT OF KERALA

Labour (A) Department

NOTIFICATION

G. O. (Rt.) No. 258/83/LBR. *Dated, Trivandrum, 7th March 1983.*

The award of the Industrial Tribunal, Quilon in respect of the dispute between the (1.) The Manager, Rajmohan Cashews Limited, N. N. C. Estates, Vadakkevila, Quilon-10 (2) The Manager, International Cashew Traders, N. N. C. Estates, Vadakkevila, Quilon-10 (3) The Manager, Lekshmi Cashew Corporation N. N. C. Estates, Vadakkevila. Quilon-10, (4) The Manager, Malabar Cashew nuts & Alilied Products, N. N. C. Estates, Vadakkevila, Quilon-10 and the workmen of the above establishments represented by the Secretary, Kollam Taluk Landing & Loading Head Load Workers Congress, INTUC, Pallimukku, Quilon-10 received by Government on 26-2-1983 is hereby published under section 17 of the Industrial Disputes Act, 1947 (Central Act, XIV of 1947).

By order of the Governor
K. SIVADASAN,
Deputy Secretary to Government.

In the Industrial Tribunal, Quilon

(Dated, this the 24th day of February 1983)

Present :

SHRI C. N. SASIDHARAN, B.SC., B.L.,
Industrial Tribunal

In

INDUSTRIAL DISPUTE No. 7/82 (OLD NO. 23/77)

Between

(1) The Manager, Rajmohan Cashews Ltd., N. N. C. Estates Vadakkevila, Quilon-10.

(2) The Manager, International Cashew Traders, N.N.C. Estates. Vadakkevila, Quilon-10

(3) The Manager, Lakshmi Cashew Corporation, N N.C. Estate, Vadakkevila, Quilon-10.

(4) The Manager, Malabar Cashew nuts & Alliled Products, N.N.C Estates, Vadakkevila, Quilon-10.

(By Advocate Sri. K. Velappan Pillai, Quilon)

And

The workmen of the above establishments represented by:
The Secretary, Kollam Taluk Landing & Loading Head Load Workers Congress, INTUC, Pallimukku, Quil n-10.
(By Advocate Sri. K. Ananthasivam, Quilon)

AWARD

The issue referred for adjudication by Government as per G. O. (Rt.) No. 1178/77/LBR. dated 5-10-1977, relates to Bonus to Head Load workers. The reference was in the first place to the Industrial Tribunal, Alleppey and from where it was subsequently transferred to this Tribunal on its constitution and refiled in the present number.

The union placed a demand for Bonus for the year 1976-77 for headload workers, with the management concerns. The union also requested the District Labour officer, Quilon to initiate conciliation proceedings to settle the dispute. The union wanted Rs. 300 per worker as Bonus, advance. Though initially they agreed for payment of Bonus, the representatives of the management concerns wanted time to consult the proprietors to sign the conciliation agreement. Later on they did not turned up to execute the settlement. The workers struck work which lasted for nearly 2 months. On 27-9-1977 the Labour Commissioner convened a conference but no settlement was effected and hence the Government referred the issue for adjudication to this Tribunal.

The claim of the union is that a number of 38 workers listed in the claim statement are permanent workers of the management. They are paid wages by these managements and are entitled to get all the benefits including the right to get bonus at the rate of 20% of the total earnings for the year 1976-77.

The management of the above concerns filed separate reply statements denying all the claims of the union. They denied that these persons mentioned in the claim statement are workers of the management much less permanent workers of the managements. According to them there is no employer, employee relationship between the management and the above workers. Since they are not workers of the management, they contend that, the reference if the dispute is without jurisdiction. They further contend that the work of loading and unloading in the office premises of the concerns is done by a set of sporadic, heterogeneous and fluctuating body of head load workers on contract basis. They work as a gang under a leader called moopen, which is to that moopen that the loading and unloading work is given on contract basis. The moopen brings different workers at different times. There is no nexus between the management concerns and

the workers. They have no suprevisory control with regard to the nature or the manner of work. The said fluctuating body of persons who come under the leadership of moopen are doing the similar work to other establishments also. They are working under an independent contractor called moopen and they cannot by any stretch of imagination be deemed to be the workers of the management. They are not entitled to any bonus or any other benefits to which the workers of the management concerns are entitled to. The management further contend that the claim of bonus at 20% of the earnings is unjustifiable. They admit in paragraph 9 of the reply statement that when an explosive situation arose the managements gave recoverable advances of Rs. 1,400 in Malabar Cashew nuts & Allied Products, Rs. 500 in International Cashew Traders, Rs. 2,200 in Lekshmi Cashew Corporation and Rs. 2,800 in Rajmohan Cashews Limited, as advance as requested by the moopens. They therefore pray that this Tribunal to hold that the workers are not the workers of the management concerns and that they are not entitled to receive bonus for the year 1976-77.

The union filed a rejoinder re-affirming their contentions in the claim statement.

The point for decision is whether the workers are entitled to Bonus as claimed.

On the side of the union, WW1 was examined to substantiate their case. The management has examined MW1 to MW4 to controvert the claim of the union and exhibits M1 to M7 were marked.

The fact that there was dispute between the workers on the one hand and the management on the other hand and that there was conciliation conferences convened by the officials of the Lobour Department is admitted. Therefore there is a dispute between the workers and the managements and undoubtedly there is an Industrial Dispute. So the reference under Section 10 of the Industrial Dispute Act is proper and valid.

The contention of the management concern that these workers are not employed by the management but by an independent contractor called moopen has to be considered in the light of the evidence adduced on either side. Though in the reply statement and in the oral evidence adduced on behalf of the management, they introduce a person called moopen, who engaged the workers as an when required by the management no serious attempt was made by the management to substantiate their case by any satisfactory evidence. Apart from their ipse dixit, none of the so called moopen were examined. They are the best witnesses to prove whether the workers were engaged by them as independent contractors. It is admitted by the management that these so called moopens are alive and are avilable for examination. But none of them were cited or examined. Instead they had produced, Exhibits M1 to M7 vouchers purported to have been issued by the management to the moopens. Those vouchers are not properly proved. They are in the handwritings of the managers of the management concerns and they can be created at any time. These exhibits cannot therefor be relied on without examining the moopens to whom they were alleged to have been issued. On the other hand WW1 in his evidence has

categorically denied the existence of the moopens WW1 has stated that the workers involved in the dispute are permanent works of the management concerns and are paid by the managements directly. Though the management has putward the contention that these workers are doing similar work to other establishments also, no satisfactory or convincing evidence has been adduced to prove that contention. So the case of the management that the workers were employed by the moopens independently and not by the management falls to the ground.

The managements had admitted that advance amounts were paid to the workmen at-least to purchase peace. So admittedly amounts are being paid to the workers though the management fight shy to admit that the same has reference to a payment of bonus. Since the management has admitted that workers are employed by them in these concerns through moopens and there is no evidence of the existence of any moopen between the management and the workmen, I am constrained to hold that there is employer employee relationship between the management and the concerned workmen. So the absence of any muster roll, attendance register etc. are not very material in deciding the issue. The managements are bound, as per law to maintain these relevent records. If they fail to do so, the workmen cannot be penalised. Their legitimate claim of bonus cannot be denied on that score alone.

There is no case for the managment that the quantum of bonus at the rate of 20% is excessive and there is no case of loss in business during the year 1976 77.

On a consideration of all the materials and circumstances of the case. I hold that the claims of the workmen are legitimate and they are entitled to get bonus as claimed. An award is passed accordingly.

C. N. SASIDHARAN,
Industrial Tribunal.

Quilon,
24-2-1983.

Appendix

Witness examined on the side of the Union :—

WW1. Sri Kunjuraman.

Witnesses examined on the Management's side:—

MW1. K. Raveendran Nair.
MW2. G. Krishnan Nair.
MW3. M. Karunakaran Nair.
MW4. G. Sahadevam Pillai.

Exhibits marked on the management's side : —

M1. Voucher dated 14-4-1979.
M2. Voucher dated 21-4-1979.
M3. Voucher dated 15-5-1976.
M4. Voucher dated 22-10-1977.
M5. Voucher dated 22-2-1977.
M6. Series-26. Vouchers on various dates during 1976-77
M7. Series-5. Vouchers during 1978 and 80 on various dates.

GOVERNMENT OF KERALA

Labour (A) Department

NOTIFICATION

G. O. (Rt.) No. 105/83/LBR. *Dated, Trivandrum, 28th January*, 1983.

The award of the Industrial Tribunal, Alleppey in respect of the dispute between (1) Chief Personel Officer, FACT Limited, Udyogamandal, (2) Chief Medical Officer, J. N. M. Hospital, Udyogamandal, and the workmen of the J. N. M. Hospital, Udyogamandal represented by the President, Greater Cochin Private Hospital Employees Janatha, J. N. M. Unit, Edappally P. O. received by Government on 6-1-1983 is hereby published under section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947).

By order of the Governor,

K. SIVADASAN,

Deputy Secretary to Government.

IN THE COURT OF THE INDUSTRIAL TRIBUNAL, ALLEPPEY

Dated this the 25th day of November 1982

Present:

Shri K. KANAKACHANDRAN, B.Sc., LL.B.,

Industrial Tribunal

INDUSTRIAL DISPUTE No. 22/82

(Old No. 35/79 before the Industrial Tribunal, Calicut)

Between

(1) CHIEF PERSONEL OFFICER, FACT Ltd., Udyogamandal
(2) CHIEF MEDICAL OFFICER, J.N.M. Hospital, Udyogamandal

And

THE WORKMEN

of the J.N.M. Hospital, Udyogamandal represented by the President, Greater Cochin Private Hospital Employees Janatha, J.N.M. Unit, Edappally P.O.

Representations:—

M/s. Menon & Pai,
Advocates, Ernakulam. ... *For Management.*

Shri A. A. Abdul Rahiman,
Advocate, Ernakulam. ... *For Union.*

AWARD

This dispute arose on allegation by the Union that one Aleyamma Kurian, an employee of J. N. M. Hospital, had been denied promotion as Assistant Matron. The J. N. M. Hospital is a unit of FACT, Udyogamandal, Alwaye.

2. On the basis of the Government Order G. O. (Rt.) No. 1108/79/L&H dated 4-8-1979, this dispute was referred to the Industrial Tribunal, Calicut for adjudication when that Tribunal had the jurisdiction.

3. The facts which are not in dispute are as follows:—Smt. Aliyamma Kurian who had been working as Sister in the J.N.M. Hospital joined duty on 1-11-1966. Another two Sisters viz., Mary Cherian and Stephanie Fernandez had also joined service on 1-12-1966 and 1-1-1967 respectively. Sister Pancrasia who was alleged to have been given preference in the matter of promotion as Assistant Matron (which is the dispute in this case) was appointed only on 1-3-1967. All of them were appointed in the same scale of pay viz., Rs. 200-300. From 1-10-1968 onwards, they were given D. A. of Rs. 130 in addition to their basic pay. From 1-10-1969 onwards they were put in the scale of pay of Rs. 250 and fixed D. A. of Rs. 150. With effect from 1-10-1969, Sister Pancrasia was given another enhancement in her pay. Her pay was raised to Rs. 300 plus D. A. and from 19-6-1970 onwards her designation was changed as "Operation Theatre Sister".

4. On 15-9-1976 Sister Pancrasia was posted as Assistant Matron in the scale of Rs. 300—450. The union's case is that this was vertually a promotion to Sister Pancrasia. But the case of the management is that it was only a change in the designation of Sister Pancrasia.

5. The union filed the claim statement in which it is stated that Sister Pancrasia got two benefits at a time promotion as well as change in the designation. The other three Sisters who had been appointed earlier than her and who had been confirmed earlier than her were superseded in the matter of promotion by the management. When undue preference was shown to Sister Pancrasia by the management, union had objected and that objection was not considered. The matter was raised before the Labour Department by the union. Smt. Aliyamma Kurian herself had submitted an individual petition also. The labour officials convened several conciliation conferences and later, advice was given to the management to rectify the anomaly. It is stated in the claim petition that Sister Pancrasia belongs to a religious organisation and her appointment was in the vacancy of another Sister from the same Religious Organisation

who had been transferred to some other place. Sister Pancrasia was not getting any benefits like provident fund because her appointment itself was on contract basis. This religious Sisters were confirmed as company employees only after an agreement between the union and the management. The management enhanced the pay of Sister Pancrasia, by merging the theatre allowance of Rs. 50 given to her in the basic pay. It is further contended that agreements between the management and the union dated 22-4-1970 and 24-10-1973 do not show anything about giving special allowance or increase in the pay in the case of Sister Pancrasia whereas agreement dated 24-10-1973 shows that Theatre Technician was given a special allowance of Rs. 30 per month. It is further alleged that though Sister Pancrasia was promoted to the post of Assistant Matron, she was working as Theatre in-charge. But the 3 Sisters senior to her including Aliyamma Kurain were working as ward-in-charge from the date of their appointments without any extra benefits. These Sisters are also doing all other routine duties as that of Sister Pancrasia. Therefore it is a case of the union that the supersession of the junior in the matter of promotion as Assistnat Matron in JNM Hospital is illegal.

6. The management has filed a detailed written statement. The case of the management is that J.N.M. Hospital is a Charitable Hospital not being run for profit. The first contention is that the employee or employees against whom Smt. Aliyamma Kurian claims seniority are not in this dispute and therefore no relief can be granted to her in these proceedings. The management also disputes the validity of the reference since the promotion itself is an individual promotion and from that no industrial dispute will arise. Therefore it is the contention of the management that the reference itself is incompetent. It is further stated that Sister Pancrasia belongs to the congregation of the religious Sisters of charity and normally they are kept outside the purview of collective bargaining agreement. It is further stated that Sister Pancrasia was working in a higher scale of pay as 'Operation Theatre Sister' from 1-10-1969 and her entry in service was on 1-3-1967 as Sister Nurse. Her appointment in the hospital was in terms of an agreement the company had with the congregation of Sisters of charity of St. Bartolomea Capitanio and St. Vin. cenza Gerosa. Sister Pancrasia was given a new designation viz., 'Operation Theatre Sister' on 19-6-1970 with retrospective effect and on the basis of new designation. She was given revised scale of Rs. 300—450 also. When this revision in scale of pay and change in designation were effected, neither the union nor the three Sisters mentioned in the claim statement had objected the action of the management. It is further stated that Smt. Aliyamma Kurian had joined the hospital as a probationer and she was appointed as a 'Sister' on contract for a specific period of 5 years in the scale of Rs. 200—300 with effect from 1-5-1967. While Sister Pancrasia was working in the grade of Rs. 300—450, she was redesignated as an Assistant Matron on 15-9-1976. In fact there was no promotion to Sister Pancrasia on the above date as alleged by the union. Sister Pancrasia was doing the work of Operation Theatre Sister whereas the three Sisters mentioned by the union were working only as ordinary Sisters. After the re-designation of Sister Pancrasia as Assistant Matron, she was helping the Matron in the Administrative functions. It is further contended that the allegations in the

claim statement that Sister Pancrasia was promoted overlooking the seniority of the three Sisters viz., M/s. Aliyamma Kurian, Mary Cherian and Stephanie Fernandez are of no merit. Sister Pancrasia was not given any special benefit on 15-9-1976. The allegation that Sister Pancrasia was confirmed only after the agreement between the union and the management in the year 1973 was also denied by the management. Their case is that on the dates of agreements viz., on 22-4-1970 and 24-10-1973, Sister Pancrasia was receiving the salary in the scale of pay of Rs. 300—450. It is also denied that the management had merged the so called theatre allowance of Rs. 50 given to Sister Pancrasia with her basic salary. According to the management the performance of Sister Pancrasia was assessed and found to be suitable for the post of Assistant Matron and hence she was designated as Assistant Matron. Another contention of the Management is that since Sister Pancrasia was working in a higher scale of pay, she cannot in any way to be considered as junior to Aliyamma Kurian. Smt. Aliyamma Kurian was not considered as suitable for being promoted as Assistant Matron. Moreover there is no vacancy of Assistant Matron also now in order to give accommodation to Aliyamma Kurian as Assistant Matron. In fact she was not denied of any promotion overlooking her claims.

7. The union filed a rejoinder by which most of the contentions raised by the management were controverted. The dispute, according to the union, is regarding the supersession of Sister Pancrasia over three nurses senior to her. The J.N.M. Hospital is a charitable hospital or not is not the relevant issue but it is run for the employees of the FACT. It is a unit of FACT Ltd., and all employees therein are coming under the employment of FACT and therefore the employees of the hospital are also coming under the provisions of the Industrial Dispute Act. It is conceded that the promotions are purely managerial functions but there are certain guidelines, precedents, conventions and practices on account of various agreements by which promotions of employees are to be made. In the case of the three nurses belonged to the union, after the completion of their probation, management had given them appointment orders only on contract basis for three years. Since these Nurses were reluctant to accept the contract appointments, finally the management had given them regular appointment. The statement of the management that Sister Pancrasia was receiving higher salary than those of three Nurses is also denied. According to the union, the management had increased the allowance to Sister Pancrasia without the knowledge of other sisters and that allowance was later merged with the salary of Sister Pancrasia. Immediately after knowing the higher scale of pay given to Sister Pancrasia, Smt. Aliyamma Kurian and others had made complaint. Only because of the fact that Sister Pancrasia was working in the theatre, she was designated as Theatre Sister. At that time Aliyamma Kurian and others were in charge of some other departments of the hospital with a speeific duties and functions. The management had not assessed properly or had not conducted any test before giving promotion to Sister Pancrasia. Plea of the management that this is a dispute relating to an individual promotion is also controverted by saying that the promotion given to Sister Pancrasia would adversely affect not only Aliyamma Kurian and two others but also the settled norms already fix in the matters of promotion.

8. From the rival contentions, the only issue for consideration in this dispute is whether the supersession of Sister Pancrasia in the matter of appointment as Assistant Matron was justifiable.

9. It is not in dispute that the post of Assistant Matron in the JNM Hospital carries higher scale of pay. It has come out in evidence that it is a promotion post from the lower category of Sister Nurse. Evidently and admittedly Sister Pancrasia is junior to 3 other Sisters whose cases are espoused by the union in these proceedings. Then what is the additional qualification Sister Pancrasia is having for getting preference for appointment or promotion as Assistant Matron—this is the question to be answered by the management in this case.

10. The management contention is that the Sisters belonging to the congregation of Sisters of Charity are appointed in the hospital on the basis of an agreement between the management and the congregation of Sisters. Ext. M8 is an agreement entered into between the management and congregation of Sisters of Charity of St. Bartolomea Capitanio. Ext. M8 is only a carbon copy of agreement and the production of this document itself was opposed by the counsel for the union at the time of adducing evidence. In this context it would be better to examine whether the Sisters of congregation are entitled for any preferential right compared to other staff of the J.N.M. Hospital.

11. Ext. W8 is a copy of the memorandum of settlement between the parties in this dispute on 3-3-1970. In Annexure—A to that different categories of posts and also the scales of pay each post carry are shown. As per this, there are two posts of Assistant Matrons and three posts of Sisters and three posts of Sister Nurse (grade I). The post of Assistant Matron carries a higher scale of pay compared to the post of Sister and Sister Nurse Grade I. Therefore to the post of Assistant Matron, the feeder categories are Sisters, Sister Nurse (Grade I), since these posts carry same scale of pay. Moreover there is no evidence to assume otherwise.

12. Ext. M2 is an order of the Industrial Relations Manager of the management dated 19-6-1970 by which the scales of pay of the Sister of Congregation were revised. Accordingly in the case of Sister Pancrasia, her scale of pay was revised as Rs. 300—450 with effect from 1-10-1969. Along with the revision of pay of Sister Pancrasia, the scales of pay of Matron, Nursing Sister and Home Sister were also revised and increased.

13. Ext. W8 is a memorandum of settlement between the management and J.N.M. Hospital Employees Association. This settlement is prior to Ex. M2 order. By the memorandum of settlement Ext. W8 dated 22-4-1970, substantial changes were effected in the pay scales of about 82 employees working in the J.N.M. Hospital. This agreement covers all the post in the J.N.M. Hospital including Assistant Matron. In this agreement, not only the Sisters coming under regular recruitment but also the Sisters of Congregation were included. From Annexure-B to Ext. W8, it can be seen that the Assistant Matron was given the pay of Rs. 360. This scale of pay was comparatively higher than that of Sister Nurse. Therefore from Ext. W8 it can be seen that by that settlement not only the scales of pay of regular saff of J.N.M. Hospital but also the Sisters of Congregation were fixed.

14. After effecting revision in pay in respect of Sisters of Congregation, by Ext. M2 proceedings the pay scale of Sister Pancrasia was increased. The scale of pay fixed as per Ext. W8 was subsequently revised from Rs. 250 to Rs. 300 by Ext. M2 proceedings. The union cannot have any grievance when pay scales of Sisters of Congregation were increased. Their dispute is confined mainly to the promotion given to a Sister of Congregation in an irregular manner. The case of the management is that in fact there was no promotion in the case of Sister Pancrasia but she was given only a new designation. Even when by Ext. M2 order, additional benefits were given to the Sisters of Congregation including Matron, the pay fixed in the case of Sister Pancrasia was only Rs. 300. But as per Annexure to Ext. W8, the post of Assistant Matron carries a higher scale of pay i. e., Rs. 360 plus D.A. of Rs. 150. Therefore the contention of the management that the post of Assistant Matron and the post in which Sister Pancrasia was holding are one and the same is of no substance since both posts carries different scales of pay. While increasing the pay of Sister Pancrasia, her designation was also changed as 'Operation Theatre Sister'. Although Sister Pancrasia was re-designated as 'Operation Theatre Sister' the post she was holding carries only the scale of pay of Rs. 300—450. This pay scale is not at all equivalent to the scale of pay of Assistant Matron. Therefore, merely by virtue of holding the post of Operation Theatre Sister, Sister Pancrasia cannot be designated automatically or otherwise as Assistant Matron. The case of the management is that on 15-9-1976 Sister Pancrasia was not promoted as Assistant Matron but she was only conferred a new designation. When Sister Pancrasia was re-designated as Assistant Matron she was getting only the pay she was getting on the basis of Ext. M2.

15. It is admitted by the management that in fact there was no mention about the special allowance or revision of pay granted to Sister Pancrasia in the Ext. W8 agreement dated 22-4-1970. It is the same position not only in Ext. W8 but in the subsequent agreement dated 24-10-1973 also. It is true that Sister Pancrasia was looking after the work of operation theatre. The three other Sisters are doing the work of ordinary Sisters and possibly on account of that they were not paid any extra benefit. May be on account of the additional work of Operation Theatre Sister, Sister Pancrasia had been given Rs. 50 as additional pay. But that does not mean that the Operation Theatre Sister has holding the same rank and status as that of Assistant Matron. The pay scales of both posts viz., Assistant Matron and Operation Theatre Sister are different. There is no case for the Management that the post of Assistant Matron is equivalent to the post of Operation Theatre Sister. It has come out in evidence that Sister Pancrasia was getting only Rs. 300 in the scale of pay of Rs. 300—450 at the time when she was designated as Assistant Matron. Whereas the scale of pay of Assistant Matron is Rs. 360 plus D.A. even as per Ext. W8 dated 22-4-1970.

16. The management had filed a statement showing various revisions made in the pay scales of Sisters. By Ext. W8 agreement dated 22-4-1970, the salary scale of Rs. 200—300 was raised to Rs. 225—350. Similarly by Ext. M2, the salary scale of

Sister Pancrasia was raised to Rs. 300—450. Later by Ext. M3 the re-designation was effected to the post of Sister (Operation Theatre), Sister Pancrasia was holding. Therefore even after re-designation by Ext. M3 order, Sister Panerasia continued to be in the scale of pay of Rs. 300—450. By another agreement dated 25-11-1978, the scale of Rs. 225—350 was revised to Rs. 420—680 with effect from 24-10-1976. Similarly the scale of Rs. 300—500 was revised to Rs. 500—850 with effect from 24-10-1976 by the same agreement dated 25-11-1978. The statement given by the management does not say anything about the pay fixed in the case of Assistant Matron. Even as per Ext. W8 agreement, when revision was made in respect of Assistant Matron, it was in the scale of Rs. 360—450.

17. While going through Ext. W8, it can be seen that the congregation of Sisters of Charity were bound to supply only three category of Sisters viz., Matron, Nurses and Home Sister. Ext. M8 does not say anything about Assistant Matron, a post in the workman category. Therefore it is unambiguously clear that the post of Assistant Matron is not set apart exclusively for the congregation of Sisters of charity. In the absence of any such reservation, in the normal course, a Sister in the regular service can aspire for promotion as Assistant Matron. It is admitted in the written statement that only through promotion, appointment to the post of Assistant Matron can be made and the feeder category is that of Sisters Nurse. Sister Pancrasia as well as Aliyamma Kurian were Sister Nurses and they can aspire for promotion only on the basis of the seniority, of course, with reference to the merit also. There is no case for the management that Aliyamma Kurian is unqualified to be promoted as Assistant Matron. Instead, the case of the management is that since Sister Pancrasia was holding the post having the higher scale of pay, she was designated as Assistant Matron. In view of the reasons stated earlier by me, there is no merit in the contention raised by the management. Merely by virtue of the position that the particular person is holding a post which carries higher scale of pay on account of some preference shown, it cannot be said she alone can be considered eligible for being promoted to higher post. Only justification, according to the management, is that since Sister Pancrasia was holding a post having higher scale of pay she is the only person who could be promoted to the post of Assistant Matron. I do not find any justification in this. If the management had a case that Aliyamma Kurian is ineligible for the post of Assistant Matron, of course her claim on seniority is of no use. In the absence of any contentions on that behalf I have to hold that the promotion or re-designation, whichever the case may be, given to Sister Pancrasia cannot be justified. Therefore an award is passed holding that the denial of promotion to Aliyamma Kurian is illegal. In view of the seniority she is possessing over Sisetr Pancrasia, she can be promoted subject to the merit and suitability which may be assessed by the management as per the provisions contained in the standing orders if there is such a provision on that behalf. Award is passed accordingly.

K. KANAKACHANDRAN,

Industrial Tribunal.

APPENDIX

Witness examined on the side of the Management:

MW1. Rajagopalan Nair.

Exhibits marked on the side of the Management:

Ext. M1. Letter No. PO/F59/67 dated 8th December 1968 addressed to Aliyamma Kurian

,, M1 (a) Copy of the letter dated 24-2-1967 addressed to Shri Pancrasia

,, M2. Copy of revision of grades to religious sisters dated 19-6-1970.

,, M3. Re-designation order dated 7-9-1976.

,, M4. Appointment order issued to Smt. Aliyamma Kurian dated 10-6-1967.

,, M5. Appointment order issued to Smt. Aliyamma Kurian dated 8-9-1967.

,, M6. Promotion order issued to Smt. Aliyamma Kurian dated 14-2-1978.

,, M7. Sanctioned and filled strength of J.N.M. Hospital as on 14-2-1978.

,, M8. Copy of agreement.

Witness examined on the side of the workmen:

WW1. Aliyamma Kurian

WW2. Metelda Antony.

Exhibits marked on the side of the workmen:

Ext. W1. Appointment order dated 13-10-1966.

,, W2. Appointment order No. PO/F-59/67 dated 8-9-1967.

,, W3. Memo of interview dated 21-10-1977.

,, W4. Letter No. PM(U)/I.C.33/78 dated 14-2-1978 addressed to Mrs. Aliyamma Kurian.

,, W5. Copy of the letter dated 14-2-1978.

,, W6. Letter No. CMO/253/78 addressed to Mrs. Aliyamma Kurian dated 23-2-1978.

,, W7. Letter addressed to Mrs. Aliyamma Kurian dated 27-2-1978.

,, W8. True copy of Memorandum of settlement.

GOVERNMENT OF KERALA

Labour (A) Department

NOTIFICATION

G. O. (Rt.) No. 104/83/LBR. *Dated, Trivandrum, 25th January* 1983.

The award of the Industrial Tribunal, Alleppey in respect of the dispute between the Managing Director, Travancore Cochin Chemicals Limited, Udyogamandal P. O. and their workmen represented by the General Secretary, Travancore Cochin Chemicals Employees Association, Udyogamandal P. O. received by Government on 6-1-1983 is hereby published under section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947).

By order of the Governor,
K. SIVADASAN,
Deputy Secretary to Government.

In the Court of the Industrial Tribunal, Alleppey

Dated this the 25th day of November, 1982

Present:

SHRI K. KANAKACHANDRAN, B.SC., LL.B.,
Industrial Tribunal

INDUSTRIAL DISPUTE No. 42/82

(Old No. I. D. 23/81 before the Industrial Tribunal, Calicut)

Between

The Managing Director, Travancore Cochin Chemicals Ltd., Udyogamandal P. O.

And

The workmen of the above company represented by the General Secretary, Travancore Cochin Chemicals Employees Association, Udyogamandal P. O.

Representations:—

M/s Menon & Pai, Advocates, Ernakulam. .. For *Management*

M/s M. Ramachandran & K. R. B. Kaimal, Advocates, Cochin-17. .. For *Union*

AWARD

This industrial dispute relates to the suspension of Sri K. G. Balakrishnan Pillai, Badge No. 636, who is now working in the Travancore Gochin Ghemicals Ltd., Udyogamandal. The only issue referred for adjudication is the validity of the punishment of suspension awarded to the above workman for 14 days from 7-10-1980. The reference of the dispute for adjudication by G. O. (Rt) No. 635/81/LBR dated 16-5-1981 was initially to the Industrial Tribunal, Galicut and later it was transferred to this Court.

2. Alleging misconduct, as provided in clause 67 (V) 8 of the certified standing orders of the management company, the workmen was charge sheeted. Disorderly or indecent behaviour in the premises of the company is a major misconduct as per clause 67 (V) 19 of the Standing Orders. The charge sheet was responded by the delinquent workmen by his reply dated 6-10-1976. Dissatisfied with the reply of the workman, enquiry was also ordered by the Management. As per the notice of enquiry it was scheduled to conduct enquiry on 18-11-1976 at 3 p. m. As the Enquiry Officer, an advocate of Ernakulam, Sri George Varghese was appointed by the management.

3. On the first day of enquiry, on behalf of the workman, an application was filed to postpone the enquiry and the same was allowed. On the next day of enquiry also, the workman was not present but he had given a letter through his colleague to the Enquiry Officer challenging the authority of the Enquiry Officer to conduct the proceedings. By a letter dated 7th December 1976, the Enquiry Officer was informed by the delinquent that in view of the circumstance that the enquiry would not be a fair and proper one according to him, he was unable to participate the enquiry proposed to be conducted on 8-12-1976.

4. During the course of enquiry 5 witnesses were examined on the side of the management. They were (1) T. K. Kalayana Krishnan, Executive Director (2) G. P. Pillai, Dy. General Superintendent, (3) S. Sukumaran, Plant Manager (4) Varghese G. Varghese, Mechanical Superintendent and (5) George Philip; Ghief Engineer, Givil. Since the delinquent workman did not participate in the enquiry, the enquiry was conducted on 8-12-1976 in his absence. After the Enquiry, a report was submitted on 17-12-1976 and based on that report the Managing Director had imposed the punishment of suspension for 14 days on the delinquent instead of dismissal. The suspension awarded for 14 days lead to an industrial dispute and that was later referred for adjudication.

5. The union filed the claim statement. It is contended therein that the proceedings initiated against the workman is unsustainable, invalid and it is vitiated by basic defects. The suspension was effected on malafides and by way of victimisation. The alleged incident in the version of the union is as follows;—

The lady sweepers room was found locked in the morning on 6-10-1976 and on the complaint of Sweepers, the workman in his capacity as a General Secretary of the association had telephonically contacted the Executive Director about the same. After waiting for sometime, he had gone to his room with prior permission and informed him of the protest in the matter. There was no threat of intimidation on the part of the workman. Only to submit the grievance of the lady sweepers, he sat in the room and talked with the Executive Director. His action infuriated the authorities and basing on this he was suspended for a long time pending disciplinary action. The right of a trade unionist was not properly appreciated by the management and they did not consider the legality and justifiability of a demand on behalf of the lady sweepers. He was suspended pending enquiry and proceeded against only by way of victimisation. He had occasion to cross words with Executive Director and had to voice protest against the company's extravagance and corrupt practices. He had occasion to print and publish pamphlets to bring the attention of public against the mischief of the company officials. His action in the capacity as a trade union leader was not palatable to the officials at the helm of affairs and therefore they were thursting for his blood. It is also contended that the domestic enquiry was conducted in inviolation of standing orders and therefore finding of the Enquiry Officer was not at all sustainable. Therefore it is submitted that the suspension awarded by the company may be set aside and the workman may be given cost of Rs. 1,500 in these proceedings.

6. On behalf of the management, a very detailed counter statement was filed. In para 3 of the counter statement, the report sent by the Executive Director, Technical to the Head of the Department was extracted. This report was the basic material for initiating disciplinary proceedings against the workman. Para 3 of the counter statement reads as follows:—

> Shri K. C. Balakrishna Pillai was charge sheeted by charge sheet dated 6-10-1976 as the Executive Director (Technica) reported as follows:—
>
> "Today at about 9.30 a m. Mr. K. C. Balakrishna Pillai, Electrical Section, telephoned and said that the lady Sweepers' room in Civil Section has been locked by the Civil Engineer and he wanted this to be immediately opened. When I informed him that I will have to enquire about it before committing anything, he said that he may have to break open the door if no action was taken immediately, I informed him that he should not do so and that assurance to open the door cannot be given until the matter is at least investigated prima facie.
>
> While I was discussing this point with CEC who was already in my room for another discussion along with Mr. C. P. Pillai, Dy. G. S. Mr. S. Sukumar, Plant Manager II, Mr. Balakrishna Pillai entered my room in an agitated mood and started arguing with me that unless

immediate instructions are given to open the room, he will have to break open the room. When I told him that the matter was being checked up and action can be taken only based on that and requested him to vacate the room to allow me to carry on my discussion with the other officers, he behaved in an indecent and disorderly manner by arguing with me in a raised voice and sat in one of the chairs threatening that he will not leave the room until I give orders for opening the lady Sweepers' room. When I again reiterated that I cannot be pressurised for any action like that until I at least prima facie enquire into it and again requested him to leave the room, he refused to do so and behaved in a disorderly manner and refused to leave the room.

In order to avoid any unpleasant situation, I was constrained to leave my own office. I telephoned to P.M. from Dy. G. S's room to arrange for removing him from my room. Later, when I was informed that he had left my room, I came back to my room and continued my work.

At about 10.10 a.m. he again entered the room and demanded that immediate orders should be given by me to open the lady sweepers' room. When I again reiterated that I will not accede to this pressure tactics, he again sat on one of the chairs and said he will not leave my room until I give orders as desired by him. After about 5 to 10 minutes of argument, he left the room"

7. It is further stated by the Management that as per clause 67(V) (8) of the Certified Standing Orders of the Company, threatening any person within the company's premises is a major misconduct. Disorderly or indecent behaviour on the premises of the company is also a major misconduct as per Clause 67 (V) 19 of the said Standing Orders. The acts of the delinquent amount to commission of acts subversive of discipline or good behaviour within the premises of the Company which constitute major misconduct as per clause 67 (V) (1) of the Certified Standing Orders of the company. The delinquent workman was charge sheeted on the basis of the above misconduct. Since the complaint was laid by the Executive Director (Technical), it was not at all proper to conduct the enquiry by an official subordinate him. Therefore a practicing lawyer. Mr. George Varghese, was appointed as an Enquiry Officer. The Enquiry Officer conducted enquiry proceedings after giving due notice to the delinquent workman. The delinquent workman did not appear on the first day of enquiry. He submitted a letter to the Enquiry Officer requesting for time to consider whether he should participate in the enquiry or not.

8. Para 5 of the counter statement states about the antecedents of the delinquent. He was appointed as a helper in the company on 16-1-1960. The disciplinary actions were taken against him earlier for refusal to attend the work as instructed by the Engineer and for leaving the work spot without permission. However on the assurance given by the President, Travencore Cochin Chemical Employees Association no further action was taken against him. Again on 23-8-1965, he was charge sheeted for abusing the Supervisor of the Company. On several other occasions also Sri Pillai was charge sheeted or suspended for similar misconduct. In the present

case according to the management only after taking a lenient view it was decided to suspend him for 14 days from 7-10-1976 as a punishment for a major misconduct. The management denied the allegation of the lack of bonafide and victimisation. A domestic enquiry was conducted in proper manner by giving opportunity to the delinquent to participate in the enquiry. As provided in the standing orders, charge sheet was issued to him by the departmental head and there is no provision in the standing orders that enquiry can be conducted only by the Department Officers. Despite several notices, the delinquent did not participate in the enquiry and subsequently by a letter dated 7-12-1976, the Enquiry Officer was informed by the delinquent that he would not be participating in the domestic enquiry proceedings. It is further contented that the mere fact that Sri K. G. Balakrishna Pillai was the Secretary of the Union would not give him any right to commit the misconduct. In view of the serious misconduct committed by him and in view of his past records, the management would have been justified in dismissing Mr. K. G. Balakrishna Pillai from service. The lenient view taken by the management to suspend him, that too for a short period, would show that there was no element of victimisation at all. It is also contended that the suspension order was issued to him in the year 1976 but this dispute was raised only in the year 1981 and the long delay itself would show that the union had not bothered to raise a dispute. The dispute itself was the result of an after thought.

9. The management had produced before this Court the entire domestic enquiry proceedings. The files contain 15 documents including a Certified Standing Orders of the company. After the production of documents opportunity was given to both sides to adduce evidence. After the filing of counter statement by the Management, on behalf of the workman it was submitted that a rejoinder would be filed. Despite several adjournments, no rejoinder was filed. It was submitted later that the union had no intention to adduce evidence in their case. Therefore I have to adjudicate this dispute on the basis of the available materials on record.

10. From the enquiry files it can be gathered that full and fair opportunity was given to the delinquent workman to substantiate his case and to repel the allegation levelled against him. At the time of first enquiry day, the workman sought for time and that was granted by the Enquiry Officer. By a letter dated 7-12-1976, the Enquiry Officer was informed by the delinquent that he was not participating in the enquiry which was scheduled to be conducted on 8-12-1976. In the course of domestic enquiry proceedings 5 witnesses were examined on the side of the management and those witnesses were not cross-examined since the workmen had already given intimation that he had no intention to participate in the enquiry. The domestic enquiry files contains the reply to the show cause notice. A reading of the reply submitted by the workman on 11-10-1979 shows that the alleged incident was more or less in the manner as stated by the management. But the interpretation given by the workman to those incidents is in another form. A relevant extract of the reply reads as follows:—

"It may be true that I talked to him in an agitated manner, but that is not an offence under the standing orders. It is true that I told him that if the room is not opened, it may have to be opened by us. I do not think there is anything wrong in my stating this as the Secretary of the Association, in which capacity I was talking to him. It is a collective bargaining right to resort to direct action to get the grievances of the employees redressed if other means fail. And opening the room by us is a direct action within the collective bargaining rights of the Association and I wanted the EDT to be given notice of this, lest later on it should be said that no notice was given by the Association of their intention to open the room themselves .. .. ..

I reiterate that I talked in a raised voice and I argued with him but I do not behave in an indecent or disorderly behaviour to him".

11. From the versions given by the management witnesses and also by the workman himself, there is no difficulty for me to arrive at a conclusion that the incident as alleged by the management was happened and that resulted in the initiation of disciplinary action against the delinquent workman. In the claim statement of the union, although the propriety and validity of the enquiry proceedings were challenged, no attempt was made by them to substantiate their allegations by adducing evidence in this Court. Therefore I hold that the enquiry proceedings conducted by the domestic Enquiry Officer were in order and enough opportunity was given to the workman in the Course of domestic enquiry. If the workman was really aggrieved at the manner in which the entire domestic enquiry proceedings were conducted, he could have very well utilized the forum before this Court to ventilate his grievances. Having failed to do anything in that behalf the workman cannot say now that the punishment of suspension imposed on him is unjustifiable and the same has to be set aside.

12. More over the scope for interference by this Tribunal on the findings of the Enquiry Officer is also very limited especially when no attempt was made by the delinquent workman to substantiate his allegation that the finding is perverse and the domestic enquiry is invalid.

13. In view of the above discussion I hold that the punishment imposed on the workman is justifiable and there is no need for any sort of interference at the hands of this Tribunal. An award is passed accordingly.

K. Kanakachandran,
Industrial Tribunal.

GOVERNMENT OF KERALA

Labour (A) Department

NOTIFICATION

G. O. (Rt.) No. 5/83/LBR. *Dated, Trivandrum, 1st January 1983.*

The award of the Industrial Tribunal, Alleppey in respect of the three disputes between M/s Azeez Drug House, Cochin-2, and their workmen represented by the General Secretary Mercantile and Estate Staff Guild 38/159-3. TD Road Cochin-11 received by Government on 9-12-1982 is hereby published under section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947).

By order of the Governor,
K. SIVADASAN,
Deputy Secretary to Government.

In the Court of the Industrial Tribunal, Alleppey.
(Dated, this the 24th day of November 1981.

Present:

SHRI K. KANAKACHANDRAN, B.SC., L.L.B,
Industrial Tribunal,

(1) INDUSTRIAL DISPUTE No. 43/82.

Between

M/s. Azeez Drug House, Cochin-2.

And

The workmen of the above establishment represented by the General Secretary, Mercantile and Estate Staff Guild, 38/159-3 T. D. Road, Cochin-11.

Representations:

Sri P. Karunakaran Nair,.. *For Management*
Advocate, Cochin-20

Sri R. D. Shenoi,.. *For Respondent*
Advocate, Ernakulam

(2) *Industrial Dispute No. 59/82.*

The General Secretary,.. *Petitioner—Union*
Mercantile and Estate
Staff Guild,
38/159-3, T. D. Road,
Cochin.

By Sri R. D. Shenoi,
Advocate, Ernakulam.

M/s. Azeez Drug House,.. *Respondant—Management*
Cochin-2.

By Sri P. Karunakaran Nair,
Advocate, Cochin-2.

(3) *Industrial Dispute No. 60/82.*

The General Secretary,..
Mercantile and Estate
Staff Guild, 38 159-3 *Petitioner—Union*
T. D. Road, Cochin-11.

By Sri R. D. Shenoi,
Advocate, Ernakulam.

M/s. Azeez Drug House,.. *Respondent—Management*
Cochin-2.

By Sri P. Karunakaran Nair,
Advocate, Cochin-20

AWARD

In ID. No. 43/82, the denial of Employment of workmen from 31-12-1981 in Azeez Drug House, Cochin-2 was the issue referred for adjudication by the Government of Kerala in G. O. (Rt) No. 8181 LBR dated 23-5-1981 The dispute was raised by the General Secretary, Mercantile and Estate Staff Guild. 38/159-3 T. D Road, Cochin-11.

2. A complaint petition filed by the Union, under Sec. 33A of the Industrial Dispute Act was registered as I. D No 59 82. In this petition, the complaint of the petitioner was against the illegal lockout declared by the management on 4-9-1981. It is alleged in the petition that the lockout was virtually an attempt to deny employment to workmen and it is tantamount to change in their service conditions. It is further prayed that this Tribunal may pass an award directing reinstatement of all 8 workers who had been denied employment.

3. The subject matter in I. D. No. 60/82 is the closure of establishment by the same management during the pendency of the Industria Dispute viz., I. D. 43/82. The same union is the petitioner in thel application filed under Sec. 33A of the Industrial Dispute Act.

4. Even before the filing of these complaint petitions which were later registered as Industrial Disputes, the management was declared ex-parte by an order dated 7-7-1981 of the Industrial Tribunal, Calicut. Subsequently an application was filed by the management to set aside the ex-parte order and the same was allowed on 11-2-1982.

5. In all these 3 cases the management filed written statements and the matter was posted for the evidence of the parties.

6. On 24-11-1982 the counsel for the Union Mr. R. D. Shenoi filed a memo along with a copy of the settlement arrived at between the management and the union. It was stated in the memorandum of settlement that all the issues which lead to the reference of dispute as also the filing of complaint under Sec. 33 (A) were settled by mutual agreement, I am extracting below the terms of settlement.

Terms of Settlement

1. The parties agree to the closure of the Factory and the marketing section as the management has surrendered their present drug licences.

2. The following compensation will be paid to each of the following workers represented by the Union noted against their names in full and final settlement of all their claims.

1.	Mr. B. Krishna Mallan	Rs. 3,500–00
2.	Mr. G. Muraleedharan	Rs. 3,500–00
3.	Smt. B. Prema Bai	Rs. 3,500–00
4.	Smt. R. Padma Bai	Rs. 3,500–00
5.	Smt. A. Anandi	Rs. 3,500–00
6,	Smt. A. N. Jayalakshmi	Rs. 3,500–00
7.	Smt. S. B. Gauharjah	Rs. 1,000–00
8.	Mr. Abdul Rehiman	Rs. 5,000–00
9.	Mr. R. Venkateswara Kamath	Rs. 2,493–00
10.	Mr. Parameswaram Pillai	Rs. 200–00

3. The amount will be paid in four monthly instalments namely on 14th October, 1982, November, 10th 1982, 10th December, 1982 and 10th January, 1983, after deducting the advance amounts taken by the workers at different times.

4. The Union agrees to withdraw the Industrial Dispute raised by them before the Industrial Tribunal, Ernakulam.

5. Both parties agree to the above settlement signed on 14th October, 1982.

7. The above settlement was duly signed by the persons representing the management and the Union.

8. In view of the settlement as recorded above, there is no industrial dispute subsisting between the parties warranting adjudication by this Tribunal. Therefore an award is passed recording the terms of settlement.

K. KANAKACHANDRAN,
Industrial Tribunal.

GOVERNMENT OF KERALA

Labour (A) Department

NOTIFICATION

G. O. (Rt.) No. 101/83/LBR. *Dated, Trivandrum, 28th January 1983.*

The award of the Labour Gourt, Ernakulam in respect of the dispute between the Manager, Anand Lamp Ballast Manufacturing Company (Private) Limited, XXXI/1089, M. G. Road, P. B. No. 1079, Ernakulam, Cochin-11 and the workmen of the above concern, (1) Smt. T. K. Bhargavi, Thalekkattilpparambu, near to the Panchayat Office, South Kalamassery; (2) Smt. M. L. Prema, Mullapparambil House, Thammanam, Vyttila P. O., Cochin-19; (3) Smt. T. Santha Devi Amma, Peedikappa-rambil House, Chakkalamuthu Junction, Trippunithura (4) Smt. K. A. Jolly, Korankode House, Mulamthuruthy P. O., Ernakulam District; (5) Smt. K. K. Mary Margrat, Kadapparambil House, Mulampilly, Kadamakkudy P. O., Cochin-27; (6) Smt. K. A. Saraswathy, Mulappadam House, Kalamassery P. O., Alwaye; (7) Smt. M. N. Sujatha, H.No. IX/225, Puthunagaram, Veli Road, Fort Cochin, Cochin-1; (8) Smt. K. Sreedevi Amma, Sree Nilayam, Kalleppuram, University P.O., Cochin-22; (9) Sri P. R. Varghese, H. No. 1/891, North Thamarapparambu, Fort Cochin, Cochin-1; (10) Smt. N. P. Ambika, Quarters No. D. 112, FACT Township, Udyogamandal P.O., Eloor; (11) Sri V. R. Abubaker, Vadakemadathil Parambil House, S. R. M. Road, Cochin-18; (12) P. A. Jessy, Punnakkal House, S. Kalamassery; (13) Sri M. V. Devies, Mukkath House, Kunammavu, N. Parur and (14) Sri J. Philip Marshel, Pallippurath House, Carborundum Junction, S. Kalamassery received by Government on 4/1/1983 section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947).

By order of the Governor,

K. Sivadasan,
Deputy Secretary to Government.

In the Labour Court, Ernakulam

Thursday, the 23rd day of December 1982

Present :

Shri N. SUKUMARAN, B.Sc., B.L.,
Presiding Officer

INDUSTRIAL DISPUTE No. 303 of 1979

Between

The Manager, Anand Lamp Ballast Manufacturing Co. (P) Ltd., XXXI/1089, M. G. Road, P.B. No. 1079, Ernakulam, Cochin-11.

And

The workmen of the above concern, (1) Smt. T. K.Bhargavi, Thalekkattilpparambu, near to the Panchayat Office, South Kalamassery; (2) Smt. M. L. Prema, Mullapparambil House, Thammanam, Vyttila P.O., Cochin-19; (3) Smt. T. Santha Devi Amma, Peedikapparambil House, Chakkalamuthu Junction, Trippunithura; (4) Smt. K. A. Jolly, Korankode House, Mulamthuruthy P. O., Ernakulam District; (5) Smt. K. K. Mary Margrat, Kadapparambil House, Mulampilly, Kadamakkudy P.O., Cochin-27; (6) Smt. K. A. Saraswathy, Mulappadam House, Kalamassery P. O., Alwaye; (7) Smt. M. N. Sujatha, H. No. IX/225, Puthunagaram, Veli Road, Fort Cochin, Cochin-1; (8) Smt. K. Sreedevi Amma, Sree Nilayam, Kalleppuram, University P. O., Cochin-22; (9) Sri P. R. Varghese, H.No.1/891, North Thamarapparambu, Fort Cochin, Cochin-1; (10) Smt. N. P. Ambika, Quarters No. D.112 F.A.C.T. Township, Udyogamandal P.O. Eloor; (11) Sri V.R. Abubaker, Vadakemadathil Parambil House, S. R. M. Road, Cochin-18; (12) P. A. Jessy, Punnakkal House, S. Kalamassery; (13) Sri M.V. Devies, Mukkath House, Kunammavu, N. Parur and (14) Sri J. Philip Marshel, Pallippurath House, Carborundum Junction, S. Kalamassery.

Representations:—

Shri B. S. Krishnan, Advocate, Ernakulam	For *Management*.
Shri M.R. Rajendran Nair, Advocate, Cochin-11	For *Workmen Nos. 1, 2, 6, 8, 10 and 14*

AWARD

Non-employment of 14 persons and the compensation during the period of non-employment are the two issues referred for adjudication by Government as per G. O. (Rt.) No. 682/79/L&H dated 8-5-1979.

2. There is no Union espousing the cause of the workmen. The workmen Nos. 1, 2, 6, 8, 10 and 14 initially entered appearance through their counsel Shri M. R. Rajendran Nair. But thereafter nothing was done and therefore an ex-parte award finding that the workmen are not entitled to any reliefs was passed by me on 29-7-1980. That award was published in the Kerala Gazette No. 45 dated 11th November 1980. In the meanwhile M. P. 80/80 was filed for setting aside the ex-parte award. That was allowed by me re-opening the case as far as it relates to the workmen who had entered appearance earlier. But claim statements, were filed by four workers alone. They are Smt. T. K. Bhargavi, Shri Philip Marshel, Smt. K. A. Saraswathy and Smt. Ambika. The others have dropped out and the contest now is between the above four persons and the Management.

3. Smt. Bhargavi had filed a claim statement in the first instance in answer to which the Management filed a written statement stating that she cannot represent the others. So another claim statement was filed by the three others. The averments in both the statements are identical. They are as follows :—

They had put in 2½ years of continuous service on a daily wages of Rs. 5 when on 8-6-1977 they were denied employment by the Management without any reason whatsoever. They were not issued any notice. No compensation was also offered. No disciplinary proceedings were also initiated. The Management did not offer them alternate employment in other places even though there was an undertaking to do so. They are prepared to work at any place where work is provided by the Management. But the Management has denied them employment in order to victimise them for enlisting themselves as members of the trade union of the workers. They are, therefore, to be reinstated with all benefits.

4. The claims are answered by the Management in its written statement contending as follows :—

The victimisation alleged is not correct. If the workers had joined any Union then that Union would naturally have taken up their case. The absence of the Union as a party to the dispute gives room for two alternate conclusions. One is that they did not join any union or the other the union was not prepared to take up their cause as they have no case at all. These workers were never employed by the Management at any time for any work connected with the Management Company. So there was no necessity or occasion for denying them employment. But the Management had entered into a contract with M/s Toshiba Anand Batteries Ltd., for composing and soldering Toshiba Anand Batteries. That contract work was available dnring the interval September 1975 to June 1977. To attend to that work persons including the workers with whom we are concerned were occasionally employed purely on contract basis. They ceased to have work when the contract itself was terminated. So there was no necessity or occasion for issuing notices to those workers or payment of compensation to them. The workers, therefore, are not entitled to any reliefs..

5. Two of the contesting workers have given evidence as WW1 and WW2. Exts. W1 to W4 are also produced by them. The only evidence on the side of the Management is the testimony of its Chairman.

6. An argument is advanced on behalf of the workmen that the Management had raised a false contention that these workmen were never employed by it when as a matter of fact the evidence available gives indications otherwise. This argument is advanced on the basis of the contention in para 5 of the first written statement (there is an additional written statement in answer to the subsequent claim statement by the three persons) to the following effect :—

"In fact these workers were never employed by the Management at any time for any work connected with the Company".

But in para 6 the circumstances under which these persons were occasionally employed are narrated. It is common case and it is also evident from the testimony of the witnesses that the management Company M/s. Anand Lamp Ballast Manufacturing Company (P) Limited is engaged in the manufacture of chokes and starters of tube light. For the manufacture of that product the Management Company admittedly has permanent workers. The work entrusted to the persons involved in this reference was soldering and packing of batteries manufactured in Toshiba Anand Batteries Limited. MW1 was at the same time the General Manager of Toshiba Anand Batteries Limited and the Chairman of Anand Lamp Ballast Manufacturing Co. (P) Limited. The two Companies were functioning in separate premises at separate places. The case of the Management is that the work of soldering and packing batteries was not connected with its product and that is a separate arrangement on contract with Toshiba Anand Batteries Limited and that is the way in which the contention is advanced. The validity of that contension has to be considered separately. But the criticism of the learned counsel appearing on behalf of the workmen that the Management had flatly denied any connection with these workmen without any bonafides and therefore adverse inference could be drawn against the truth of the claims advanced by the Management is not justifiable.

7. Even on the evidence of MW1 these workmen were employed in the Management Company's premises for soldering and packing batteries. They were paid for that work by the Management Company. MW1 states that there was no written contract between the Management Company and Toshiba Anand Batteries Limited as he was simultaneously at the helm of affairs of both Companies. The details of the terms of contract between the two Companies are absent. But for our purpose it is evident that the Management Company employed these persons for a particular work and paid them for the same. The fact that there was a contract with the other Company is immaterial for our purpose. So we have to proceed further finding that the Management Company was the employer of these persons. There is no basis for the contention that the workers employed on a daily wages basis are independent contractors. So these persons are workmen as that term is defined in the Industrial Disputes Act.

8. It is common case that the workmen were not provided with work after they had done the work for some time. According to the workmen they were denied employment on 8-6-1977 when the work that they were doing was still available. MW1 does not admit that these persons worked upto any particular date. He has not given specific details regarding the period in which these persons were employed. What is stated by him is that these persons and similar other persons were provided work as and when the soldering and packing work was available.

According to him the work was not continuously available and it was limited to occasions when orders for supply from the Defence Department were forthcoming. The two workmen examined have also admitted in cross-examination that the work was not continuous even though they have stated earlier that they had put in continuous service. WW1 states that she had worked only for 1½ years even though the claim is that she had worked for a continuous period of 2½ years. WW2 had admitted that work was not available in certain weeks. He admitted in cross-examination that he worked only 230 days in 1976. He was not sure as to how many days he had worked in 1977. In re-examination he reaffirmed that he worked only for 230 days in 1976. WW1 and WW2 do not even claim that they have worked for 240 days or more in 1975. The Management's claim that the particular work started only in September 1975 is not seriously disputed. When that is the position there was no occasion for putting more than 240 days of work in any year. All the workmen claim the same length of service. The admissions made by WW2 must therefore bind the others also. It is also important to notice that the other two workmen have not come forward to give evidence. It is true that the Management did not produce any record to reveal the actual days of work. But according to the Management these workers were not entered in the muster roll. That it was so is admitted by WW1 and WW2 also. Much reliance is placed by the learned counsel appearing on behalf of the workmen on Exts. W1, W2 and W4 E. S. I. cards in support of the claim that the workmen were continuously employed. But enlistment in the E. S. I. Scheme is obligatory even if the workmen had worked only less than 240 days in an year. So those Cards cannot help the workers. Of course the Management could have produced accounts to show the payments made to these workmen. But the workmen did not call upon the Management to produce the accounts. So no adverse inference could be drawn from the non-production of those accounts. In these state of affairs the position is that the workers had not completed 240 days work in any year. So termination of their services without observing the formalities prescribed in Sec. 25-F of the Industrial Disputes Act cannot be pleaded successfully.

9. It is admitted that the establishment is now closed. Of course it was closed only in 1979. Even the workmen's claim in their claim statement is that the Management had offered them work elsewhere and that they were prepared to go. That is an indication to show that no further work was available in this establishment at the time the denial of employment is alleged. The cessation of work therefore was the inevitable result of the want of further work. So it cannot be said that there was a denial of employment. The workers were employed as casual employees as and when work was available. That work was not continued in the establishment as is spoken to by MW1. In these state of affairs it is not possible to allow any benefits to the workmen.

10. In the result an award is passed finding that there was no denial of work and that the workmen are not entitled to any compensation.

Ernakulam,
23-12-1982.

N. SUKUMARAN,
Presiding Officer.

GA.20/V.

Appendix

Witnesses examined on the Workmen's side :

WW1 Smt. T. K. Bhargavi
WW2 Shri J. Philip Marshel

Witness examined on the Management's side :

MW1 Shri Vinod Sahney

Exhibits marked on the Workmen's side:

Ext. W1 Identity card issued to Smt. T. K. Bhargavi from the E. S. I. Corporation

,, W2. Identity card issued to Shri J. Philip Marshal from the E. S. I. Corporation.

,, W3 Temporary identification certificate issued to Smt. K. A. Saraswathi from the E. S. I. Corporation.

,, W4 Identity card issued to Smt. N. P. Ambika from the E. S. I. Corporation.

GOVERNMENT OF KERALA

Labour (A) Department

NOTIFICATION

G. O. (Rt.) No.109/83/LBR. *Dated, Trivandrum, 28th January* 1983.

The award of the Labour Court Ernakulam in respect of the dispute between The Proprietor, Ramaswamy and Company, Vaduthala, Cochin-23 and 2. Shri Venkiteswaran, S/o. V. Ramaswami, M/s. Ramaswamy and Company, Vaduthala, Cochin-23 (No. 2 Impleaded). and the workman of the above concern Shri M. Balakrishnan Nair, Puthuvakkal House, Iyramkulam P. O., Kakkudisseri, (via) Mala. received by Government on 15-1-1983 is hereby published under section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947).

By order of the Governor,

K. SIVADASAN,

Deputy Secretary to Government.

IN THE LABOUR COURT, ERNAKULAM

Present:

SHRI N. SUKUMARAN, B.Sc., B.L.,

Presiding Officer

Tuesday, the 4th day of January, 1983

INDUSTRIAL DISPUTE No. 354 OF 1979

Between

THE PROPRIETOR

Ramaswamy and Company, Vaduthala, Cochin-23 and (2) Shri Venkiteswaran, S/o. V. Ramaswami, M/s. Ramaswami & Company Vaduthala, Cochin-23 (No. 2 impleaded)

And

THE WORKMAN

of the above concern Shri M. Balakrishnan Nair, Puthuvakkal House, Iyramkulam P. O., Kakkudisseri, (Via) Mala.

Representations:—

Shri A. Hariharasubramanian,
Advocate, Cochin-16 ... For Management.

Shri K. Janardhanan,
Advocate, Ernakulam. ... For Workman.

AWARD

Denial of employment to Shri M. Balakrishnan Nair is the issue referred for adjudication by Government as per G. O. (Rt.) No. 1723/79/L&H dated 3-12-1979.

2. The Management shown in the reference was the Proprietor of M/s. Ramaswamy and Company, Vaduthala, Cochin-23. Pending disposal of the case the Proprietor Shri Ramaswamy died and his son Shri Venkiteswaran was impleaded in his place as per my order dated 7-2-1981 in M.P. 111 of 1980. There is no Union espousing the cause of the workman.

3. The workman in his claim statement filed before this court states that he was denied employment in November 1977 without any reason whatsoever while he was serving continuously under the Management from 1971 onwards as an Automobile Mechanic on a monthly salary of Rs. 450. He is claiming reinstatement with all benefits.

4. The contentions of the legal representative of the Proprietor are as follows:—

Shri Ramaswamy, the sole Proprietor of M/s. Ramaswamy and Company died on 19-3-1980. With his death the business came to a standstill and there is no establishment to which reinstatement could be claimed. The members of the family of Ramaswamy had no interest whatsoever in the business. Shri Balakrishnan Nair was not employed on a regular basis by Shri Ramaswamy. Shri Ramaswamy was a Transporting Contractor. For that business he was employing his own lorry and other lorries engaged on hire. Shri Balakrishnan Nair and others like him were occasionally employed to attend to urgent repairs of the lorry. Remuneration for such work was being paid then and there. Shri Balakrishnan Nair placed a demand that his accounts were not fully settled and thereupon his accounts were finally settled by Shri Ramaswamy on 5-12-1977. Thereafter he was not available for work even though he was summoned to attend to some urgent work. There was no denial of employment as alleged. Shri Balakrishnan Nair is not entitled to any reliefs much less the relief of reinstatement.

5. There is a rejoinder where it is said that Shri Ramaswamy had three lorries and that those lorries are now operated as before in continuation of Shri Ramaswamy's death employing the same set of workers. The allegation that the establishment became defunct is emphatically denied. It is also said that Shri Ramaswamy's son impleaded in the case is looking after the business.

6. The evidence consists of the testimony of MWs. 1 to 3, WW1, WW2 and Exts. M1 to M4.

7. The first point arising for consideration is as to whether Shri Balakrishnan Nair was a regular worker or not. The claim that Shri Balakrishnan Nair was employed from 1971 to 1977 is not seen denied in so many words in the written statement. The only defence is that the employment was not continuous but only occasional. But a defence is introduced through MW1 Shri R. Venkiteswaran who is the legal representative of Shri Ramaswamy that Shri Balakrishnan Nair's services were not utilised from 1971 onwards. What is stated by MW1 is that Balakrishnan Nair's services were utilised only from 1975 or 1976. MW1 was only a school boy of 15 years in 1975. He had admitted that he had no direct knowledge about the details of the business as it stood then. So much importance cannot be given to the evidence of MW1 when he gives the details regarding matters as it stood in 1975 or 1976. MW2 was a Clerk of Ramaswamy and Company. He is still employed by MW1. Of course he corroborates the statement of MW1 that he is having an independent business in tea. He also states that Shri Balakrishnan Nair was employed only from 1975 or 1976. That is a vague statement especially when viewed in the nature of the pleadings. As already mentioned the specific claim that Shri Balakrishnan Nair was employed from 1971 onwards is not denied in the written statement. So the vague statements given by MWs. 1 and 2 regarding the origin of the service cannot be given much importance. Same is the case with the evidence of MW3. MW3 is the uncle of Shri Balakrishnan Nair. The gist of his evidence is that it was he who introduced Shri Balakrishnan Nair to Shri Ramaswamy and secured him a job there. According to him it happened in 1975. Shri Balakrishnan Nair in his evidence as WW1 swears that he was working regularly from 1971. He is corroborated on this aspect by WW2. What is claimed by WW2 is that he was employed as a Cleaner by Ramaswamy and Company from 1971 to 1974 and that Shri Balakrishnan Nair was also working there during that period and thereafter till 1977. In the nature of the pleadings to which reference had already been made the evidence of WW1 and WW2 regarding the origin of service has to be preferred to those of MWs. 1 to 3. So we have to proceed finding that the services of Shri Balakrishnan Nair were utilised from 1971 to 1977.

8. Now it remains to be seen as to whether the employment was continuous. That it was so is the version of WW1 and WW2. MWs. 1 and 2 would say that it was only occasional. According to MW1 Shri Ramaswamy had only one lorry. But according to the defence there were three lorries over and above large number of lorries hired for transporting business. MW2 had admitted that sometimes even upto 300 lorries were engaged per day by Shri Ramaswamy in connection with his transporting contracts. It is the admitted case that Shri Balakrishnan Nair was entrusted with the work of repairs of lorries. If we go by the evidence of MW3 it would appear that Shri Balakrishnan Nair was employed as a regular employee on daily wages on his recommendation. It is not known as to why such recommendations were necessary if Shri Balakrishnan Nair was called for occasional work only. Much

reliance is placed by the Management on Exts. M1 to M3 vouchers admittedly issued by Shri Balakrishnan Nair in token of having received remuneration for the work done. Ext. M1 dated 15-7-1977 is a receipt for acknowledgement of Rs. 10. That shows wages for Balakrishnan Nair. Ext. M2 dated 19-7-1977 is for payment of Rs. 25 and the description is "mechanic wages paid to Balan Nair for KLE 338". Ext. M3 dated 9-7-1977 is for Rs. 65 and the description is the same as in Ext. M2. These receipts, according to the Management, give sufficient indication to infer that Shri Balakrishnan Nair is paid only for particular work entrusted to him. But the Management had chosen to produce only three receipts for july 1977 when it is admitted that he was employed from 1975 onwards. The non-production of the other receipts is very significant. Evidently there must be other receipts also. So it is not possible to draw any safe conclusions on the basis of the stray receipts produced. In all probability the Management had chosen only those receipts that are advantageous to its purpose. Ext. M4 is the receipt dated 5-12-1977 for Rs. 95 which narrates "in full and final settlement of accounts due to him". It is on the basis of this receipt that the Management argued that Shri Balakrishnan Nair had settled all his accounts on 5-12-1977 after abandoning the work in the previous month. According to Shri Balakrishnan Nair Ext. M4 is only in token of having settled the balance remuneration that was due to him.

9. From the oral evidence it is possible to come to a reasonable conclusion that Shri Balakrishnan Nair was regularly employed from 1971 to November 1977. Shri Balakrishnan Nair's case that he was denied employment does not appear probable when viewed in the background of Ext. M4. If as a matter of fact he was denied employment then it was not probable for him to have issued a receipt like Ext. M4. But that is only for Rs. 95 and cannot in any event be for the benefits due to him other than the remuneration that was due.. There is nothing to show that Shri Balakrishnan Nair was prepared to continue to work in Ramaswamy and Company. It can therefore only be a voluntary retirement. He had not been paid his benefits for the services rendered. He is therefore entitled to his retirement benefits which the Management had not paid. He is entitled to only those benefits.

10. Ext. M1 shows that he was paid only daily wages at the rate of Rs. 10. That alone can be treated as the daily wages that was due to him. Even according to WW1 there was only work for 25 or 26 days a month. So the average monthly remuneration was only Rs. 250. Shri Balakrishnan Nair had put in 7 years of service for which he is entitled to three and a half months wages as gratuity. This works out to Rs. 875. This the Management will pay.

11. In the result an award is passed directing the Management to pay a sum of Rs. 875 (Rupees eight hundred and seventy-five only) to Shri Balakrishnan Nair. Shri Balakrishnan Nair is not entitled to any other reliefs.

Ernakulam,
4-1-1983.

N. SUKUMARAN,
Presiding Officer.

APPENDIX

Witnesses examined on the Workman's side:

WW1 Shri Balakrishnan Nair.
WW2 ,, Sadanandan.

Witnesses examined on the Management's side:

MW1 Shri Venkiteswaran.
MW2 ,, Narayana Kini.
MW3 ,, Vijayan Menon.

Exhibits marked on the Management's side:

Ext. M1. A receipt dated 15-7-1977 for Rs. 10 being the wages paid to Shri Balan Nair.
,, M2. A receipt dated 19-7-1977 for Rs. 25 being the wages paid to Shri Balan Nair.
,, M3. A receipt dated 9-7-1977 for Rs. 65 being the wages paid to Shri Balan Nair.
,, M4. A receipt dated 5-12-1977 for Rs. 95 being in full and final settlement of accounts due to Shri Balakrishnan Nair.

GOVERNMENT OF KERALA

Labour (A) Department

NOTIFICATION

G.O. (Rt.) No. 100/83/LBR. *Dated, Trivandrum, 28th January 1983.*

The award of the Labour Court, Ernakulam, in respect of the dispute between the Manager, Standard Pottery Works, Choornikkara, Alwaye and the workman of the above concern Shri A. Kumaran, Kedangathu Parambu, Vidakuzha, Thrikkakara North, Udyogamandal received by Government on 4-1-1983 is hereby published under section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947).

By order of the Governor,
K. SIVADASAN,
Deputy Secretary to Government.

In the Labour Court, Ernakulam

Present:

SHRI N. SUKUMARAN, B. SC., B. L.,
Presiding Officer

Wednesday, the 22nd day of December 1982

INDUSTRIAL DISPUTE No. 12 Of 1980

Between

The Manager, Standard Pottery Works, Choornikkara, Alwaye

And

The workman of the above concern Shri A. Kumaran, Kedangathu Parambu, Vidakuzha, Thrikkakara North, Udyogamandal

Representations :

M/s Sukumaran & Usha, Advocates, Cochin-11. — For *Management.*
Shri K. Ramakumar, Advocate, Ernakulam. — For *Workman.*

AWARD

The issue referred for adjudication by Government as per G. O. (Rt.) No. 147/80/LBR dated 28-1-1980 is dismissal of Shri A. Kumaran.

II. Shri Kumaran was dismissed by the Management after conducting a domestic enquiry into certain allegations against him. The validity of the domestic enquiry was considered by me as a preliminary issue. I have found in my order dated 20-12-1982 that there was a valid and proper domestic enquiry. The findings of the Enquiry Officer were also confirmed by me. Facts necessary for the disposal of the case have been narrated in that order reproduction of which will avoid repetition. That order reads as follows :—

"ORDER

Correctness of the dismissal of a worker by name A. Kumaran is the issue involved in this reference. There was an incident within the factory during working hours involving Shri Kumaran and another worker Shri Vasu on 7-7-1977. Both the workmen were placed under suspension and an enquiry ordered. MW1 the then Assistant Superintendent of the establishment, conducted the enquiry in which the workmen participated. The Enquiry Officer found Shri Kumaran guilty of having assaulted co-worker Shri Vasu at about 8.35 a.m. on 7-7-1977 at the pugmill section of the factory. The dismissal under attack followed on the basis of those findings. Shri Vasu, the other workman, was reinstated for the reason that he was the real victim.

2. In the charter of demands appended to the reference, a clarification statement filed before this Court and the rejoinder filed in answer to the Management's written statement it is alleged by the workman that he is really innocent and the Management proceeded against him and imposed the punishment only to victimise him. Discrimination is also attributed to the Management by saying that the other workman was reinstated when Shri Kumaran was punished. The validity of the domestic enquiry is seriously disputed. The criticism is that the enquiry was held in violation of all principles of natural justice. Shri Kumaran claims reinstatement with all benefits.

3. The Management in its written statement while denying the allegation of victimisation and discrimination contends that there was an incident involving the two workmen and the Management placed both under suspension and conducted an impartial enquiry giving all opportunities to the workmen to establish their innocence and to reveal the truth and the Enquiry Officer on the evidence at the enquiry. came to the reasonable conclusion that Shri Kumaran was the aggressor responsible for he incident and Vasu the victim and appropriate punishment of dismissal awarded to Shri Kumaran and the innocent victim Shri Vasu reinstated. It is further contended that Shri Kumaran was given all reasonable

opportunities to defend himself at the enquiry. No prinoiples of natural justice were violated. Accordiug to the Management the relief sought for cannot be granted.

4. The validity of the domestic enquiry is being tried as a preliminary issue and this order relates only to that aspect. The Enquiry Officer who conducted the enquiry was examined as MW1 before me. He had proved Exts. M1 to M1 (h) as the depositions of the nine witnesses examined at the enquiry. The 9th witness whose deposition is Ext. W1 (h) is Shri Kumaran himself. Ext. M1 is the deposition of Shri Vasu. The other witnesses are employees of the Management concern. Witness Nos. 1, 2 and 5 speak about the actual incident. The others speak only of some other details subsequent to the actual incident. Ext. M 1 (j) the only other document available is the findings of the Enquiry Officer.

5. The point that has to be decided is as to whether there was a proper and valid domestic enquiry. There is only a general attack in the pleadings and the charter of demands that the enquiry was conducted in violation of all principles of natural justice. What is stated by the workman in his evidence as WW1 is that he did not cross-examine any of the witnesses and that his request before the Enquiry Officer for permission to examine his witnesses was not granted. But there is no such specific contention in the pleadings advanced by the workman. It was not even suggested to the Enquiry Officer in his cross:examination before me that Shri Kumaran was denied an opportunity to examine his witnesses. So the specific complaint advanced by the workman in his evidence that he was not given chance to adduce evidence cannot be accepted as genuine. No other specific irregularities are pointed out during the examination of the witnesses before me.

6. Though not specifically pleaded it was argued on behalf of the workman by the learned counsel appearing for him that there is no indication in the documents produced to show that a formal charge was framed and the explanation of the workman called for. It is also argued that the records do not indicate that the workman was asked to state whether he is guilty or not. It is true that the available documents do not disclose these aspects. But the answer of the Management is that there was no such contention and therefore they did not produce documents. There is great force in the stand taken up by the Management. Even at the stage of examination of the witnesses before this Court it was not complained that there was no charge or a chance to explain. In these state of affairs this argument cannot be accepted.

7. Another argument is that the Management's action was motivated with an idea to victimise this workman. There are no circumstances justifying this criticism. Admittedly there was an incedent involving these two workmen. The Management initiated action on its basis. Both were placed under suspension and a joint enqiry ordered. So the Management had ample justification to initiate action. Idea to victimise the dismissed workman is, therefore, totally absent.

8. One other complaint is that Shri Kumaran is an Illiterate workman and he did not realise the seriousness of the enquiry and he participated in it without understanding its significance. According to the learned counsel appearing on behalf of Shri Kumaran the workman should have been given expert assistance at the enquiry. The workman in his evidence states that he wanted the assistance of a lawyer and the same was refused. But such a suggestion was not put to the Enquiry Officer. In these state of affairs the case of the workman that he was refused assistance cannot be accepted as correct. It is true that the workman is illiterate. But that does not mean that the Enquiry Officer should have voluntarily offered assistance to the workman. There was no presenting officer for the Management also. All that is seen to have been done by the Enquiry Officer is to record the statements of the witnesses examined and offered them for cross-examination. The workman Shri Kumaran is seen to have stated that he has no cross-examination as in the case of all the witnesses except witness No.2. He had put a few questions to the 2nd witness. He had signed all the depositions. It is admitted that he had signed them. In these state of affairs it cannot now be complained that he was refused the legitimate right of assistance of someone at the enquiry.

9. From what has been stated above it follows that the Enquiry Officer did not violate any of the principles of natural justice.

10. The main complaint of the workman is that the findings of the Enquiry Officer are perverse. The learned counsel for the workman had vehemently argued before me that there is no corroboration of the evidence of Shri Vasu in the testimony of any other witnesses. What is stated by Shri Vasu as the first witness is that Shri Kumaran who was engaged in filling the pug mill with mud was spilling it all around thereby adding to the workload of Shri Vasu who was engaged in cleaning and that Shri Vasu requested Shri Kumaran not to spill the mud around the latter got wild and gave him a slap on his cheek followed by a fisting on the stomach. On receiving the hit he fell on the ground with severe pain on the abdomen. His co-workers assembled and gave him some first aid before he was removed to the hospital. Witness No. 2i s one Mr.Thalari who was admittedly present at the scene. (His presence is admitted by the worker in his evidence as the 9th witness.) This witness speaks about the slap on the cheek and the fisting on the stomach. But he does not narrate the prior or . subsequent developments. The fact that this witness did not give the further details is pointed out by the learned counsel appearing on behalf of Shri Kumaran as a circumstances to disbelieve him. But this witness had said that he left the scene immediately without waiting to see as to what is happening. So there was no occasion for him to have first hand information regarding the subsequent developments. Hence the fact that he did not speak of the subsequent developments is not a circumstance to say that he is not worthy of credit. His. evidence gives ample corroboration of the testimony of Shri Vasu regarding the actual attack.

11. Witness No. 5 also had given evidence that Shri Kumaran assaulted Shri Vasu. Thus there is sufficient corroboration of the version of Shri Vasu in the testimony of witness Nos. 2 and 5 on the essential particulars. The other witnesses stated only of the subsequent developments. But it is important to notice that Shri Kumaran in his evidence had admitted while denying assault that he pushed down Vasu. Of course the situation arose in different circumstances according to him. But there is only his evidence on that aspect. In the face of the testimony of witness Nos. 2 and 5 who have no special reason to give false evidence against Shri Kumaran the defence that the incident happened in a different manner is not worthy of any credit. The available evidence is sufficient to come to a reasonable conclusion that Shri Kumaran was the aggressor and Shri Vasu the real victim. The finding of the Enquiry Officer, therefore, cannot be characterised as perverse in any event. On the other hand that is the only reasonable conclusion that could be reached in the face of the available evidence. So the findings are also correct. The result, therefore, is that there was a proper and valid domestic enquiry ending in a correct finding that Shri Kumaran was guilty of violence and assault. Ordered accordingly."

III. What remains for consideration is as to whether the workman is entitled to any reliefs in the matter of punishment invoking my jurisdiction under Sec. 11-A of the Industrial Disputes Act. Both sides were heard on that aspect. According to the Management the punishment of dismissal is sustainable in view of the circumstances of the case. But the learned counsel appearing on behalf of the Union argues for the position that no deliberate acts intended to disturb the normal functioning of the establishment was committed and the incident started and developed all on a sudden and that the workman has to be reinstated with all benefits.

IV. The Management has no case that the antecedents of Shri Kumaran are in any way bad. So he is a first offender. The offence proved is assault of a co-worker during working hours in the factory. The circumstances revealed in evidence indicate that the assault on the co-worker Shri Vasu was not a premeditated or calculated move. There was an altercation between the two on the basis of certain developments and it ended in the assault. Of course there was some disturbance for the smooth functioning of the factory for some time. Still it cannot be treated as a grave offence to deprive Shri Kumaran of his means of livelihood by a dismissal. Reinstatement of the workman will not create any hard burn to the Management. Of course Shri Kumaran deserves some punishment. Loss of wages and other benefits for the broken period will be adequate punishment in the circumstances of this case. The broken period will not be treated for any purpose whatsoever. Direction for reinstatement accordingly can be issued.

GA. 19/V.

V. In the result an award is passed directing the Management to reinstate Shri A. Kumaran without continuity of service or other benefits for the broken period. The period of service upto the date of dismissal will be tacked on to the period that is yet to be served.

Ernakulam,
22-12-1982.

N. SUKUMARAN,
Presiding Officer.

Appendix

Witness examined on the Management's side :

MW1 Shri M. Purushothaman.

Witness examined on the workman's side :

WW1 Shri Kumaran, A.

Exhibits marked on the Management's side :

Ext. M1.	Deposition of Shri	M.N Vasu as MW1 at the domestic enquiry.	
,, M1 (a).	do.	Thalari as MW2	do.
,, M1 (b).	do.	Nanappan A. V. as MW3	do.
,, M1 (c).	do.	K. Mohammed as MW4	do.
,, M1 (d).	do.	P. V. Thankappan as MW5	do.
,, M1 (e).	do.	Parameswaran as MW6	do.
,, M1 (f).	do.	Devadas P.K. as MW7	do.
,, M1 (g).	do.	Balachandra Menon as MW8	do.
,, M1 (h).	do.	A. Kumaran as MW9	do.
,, M1 (i).	Findings of the Enquiry Officer dated 13-9-1977.		

Kerala Gazette No. 18 daetd 3rd May1983.
PART I.

GOVERNMENT OF KERALA

Labour (A) Department

NOTIFICATION

G. O. (Rt.) No. 45/83/LBR. *Dated, Trivandrum, 15th January 1983.*

The award of the Labour Court, Ernakulam in respect of the dispute between The Managing Proprietor, Lekshmi Vilasam Tile works, Thuruth, Alwaye and their workmen represented by the Secretary, Alwaye Tile and Pottery Workers Association, CPI Office, Temple Road, Alwaye received by Government on 20-12-1982 is hereby published under section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947).

By order of the Governor,
K. Sivadasan,
Deputy Secretary to Government.

In the Labour Court, Ernakulam

Thursday, the 16th day of December, 1982

Present :

Shri N. SUKUMARAN, B. SC., B.L.,
Presiding Officer

INDUSTRIAL DISPUTE No. 38 OF 1981

Between :

The Managing Proprietor, Lekshmi Vilasam Tile Works,
Thuruth, Alwaye

And

The workmen of the above establishment represented by the Secretary,
Alwaye Tile and Pottery Workers Association, CPI Office, Temple
Road, Alwaye.

Representations :—

M/s. Joseph & Kuriyan,
Advocates, Cochin-18. For *Management*

M/s. M. Ramachandran &
K.R.B.Kaimal, Advocates, Cochin-17 For *Union*

G. A, 15/V.

AWARD

The issue referred for adjudication by Government as per G. O. (Rt.) No. 649/81/LBR dated 20-5-1981 is "denial of employment to Sri. C. A. Thankappan, Smt. I. Gouri and Smt. A. A. Prasanna."

2. In the charter of demands appended to the reference it is alleged that the workmen who had put in 2½ years of continuous service in the tile factory belonging to the Management were denied employment with effect from 22-10-1979 without any valid reasons. Reinstatement with all benefits is what is claimed.

3. The Management in its written statement denies the claim that these three persons were employed in its tile factory. But it is said that they were occasionally employed as domestic servants at the Proprietor's residence. The fact that they were so employed does not give them the status of workmen to raise an industrial dispute. The reliefs claimed are therefore not allowable.

4. The Union filed a clarification statement reiterating the claim that the three persons were really employed as workmen in the factory. According to the Union they were employed in April or May 1976 and thereafter they had continuous service. They were not given any appointment order to be produced. Their names were also not entered in the records maintained by the Management. That situation is taken advantage of by the Management to raise a false contention that they were domestic servants. They who were real workers were denied employment without giving any notice or compensation when they raised certain claims through the Union for including their names in the registers maintained by the Management and for enlisting them for the purpose of E.S.I. and Provident Fund Schemes. They were actually retrenched while retaining their juniors and the action is illegal. Reinstatement has, therefore, to be ordered with all benefits.

5. The affected workmen were examined as WW1 to WW3. Another witness examined on the side of the Union is its Secretary. The only oral evidence on the side of the Management is the testimony of MW1 who is the son of the Proprietress and the Manager of the factory. Exts. M1 and W1 are the documents proved.

6. The main controversy is as to whether the three persons involved were employed as workmen in the tile factory of the Management. The affected workmen in their evidence as WW1 to WW3 swear in support of the claim of the Union that they were really employed in the factory. It has come out in evidence that the factory was under look out from 1975 to 1977. So the claim of the Union that these workmen were employed from 1976 onwards cannot be true. It is admitted by Shri Thankappan in his evidence has WW1 that the claim that he was employed from 1976 is not correct. What is stated by him is that he was employed by the Management on the 7th of August 1977. He does not say as to when exactly was the denial of employment. Smt. Gowri is the wife of Shri Thankappan. She

had given evidence as WW2. She does not say when she was first employed. She is also silent as to when exactly the denial took palce. What is stated by her is that her husband was denied employment first and a week later she was also sent out. Smt. Lekshmy the other worker as WW3 states that she worked continuously for three years in the tile factory from 7th of August 1977. She too is silent as to when she was denied employment. If we go by the continuous service claimed by her the termination must have occurred somewhere in August 1980. But the dispute itself is seen to have been raised as per the copy of the charter of demands available as early as in November 1979 where the allegation is that the denial was on 22-10-1979. The specific stand of the Union is that the denial was an act of victimisation because these persons raised claims for security of the job and enlistment in E.S.I. and Provident Fund Schemes through the Union. But it is admitted by WW1 in cross-examination that he did not raise any complaint regarding service conditions before his services were terminated. It is further stated by him that there is a separate Union for the permanent workers and himself and the other two workers involved in this case alone have joined as members of the Union espousing their cause from this establishment. In these state of affairs the claim of the Union Secretary as WW4 that the denial occurred as a result of demands raised through the Union cannot be accepted as correct. It is also important to notice that no documents are produced to show that any demands had been raised before the alleged denial. So the motive alleged to the Management is totally absent.

7. It is the admitted case that these three persons were not enrolled in the registers maintained by the Management. But WW3 states that she used to sign the wage register maintained by the establishment in token of having received her wages. Ext. M1 is the Wage Register-cum-Muster Roll for the relevant period. The names of these three persons do not find a place in Ext. M1. What is now claimed before me is that these three persons were casual workers for whom according to the Union, there was a separate register. But WW1 had admitted that attendance cards were being issued to all workmen including casual workers. It is further admitted by WW1 that no such cards were issued to him. It is not known as to why attendance cards were not issued to these three persons if as a matter of fact they were also employed as casual workers to whom also attendance cards were admittedly being issued. The case of the Management that these persons were employed only as domestic servants has to be examined in this background.

8. MW1 states that himself and his mother the Proprietress are residing in a building in the premises of the factory which is situated in an island and Shri Thankappan was a domestic hand engaged for keeping the cattle and as a boatman to go to the main land. The two ladies, according to MW1, were performing other duties as domestic servants. This case was put by way of specific suggestions to WW1 to WW3. WW1 then admitted that he used to go to Alwaye for making necessary purchases in connection with the domestic needs of the Proprietress. WW2 also had admitted

that she used to do work as a domestic servant at the residence of the Proprietress occasionally. WW3 also had admitted that during festival season she used to do the domestic work at the residence of the Proprietress. The admission though to a limited extent has great significance when viewed in the other circumstances discussed earlier. These admissions corroborate the evidence of MW1 that these three persons were employed as domestic servants. The other circumstances discussed indicates that they were employed only as domestic servants and not as factory workers. So the contention of the Management that these persons were employed only as domestic servants has to be upheld. When that is the position they cannot claim themselves to be workmen as defined in the Industrial Disputes Act. There is no employere-mployee relationship as defined in that Act. Hence there is ho industrial dispute at all.

9. In the result an award is passed holding that the three persons mentioned in the reference order are not workmen of the Management and that they are not entitled to any reliefs.

Ernakulam,
16-12-1982.

N. SUKUMARAN,
Presiding Officer.

Appendix

Witnesses examined on the Union's side:

WW1 Shri C.A. Thankappan.
WW2 Smt. Gowri.
WW3 ,, Prasanna.
WW4 Shri Kaladharan.

Witness examined on the Management's side;

MW1 Shri Ullas.

Exhibit marked on the Union's side :

Ext. W1. Copy of a memorandum of settlement dated 2-9-1981.

Exhibit marked on the Management's side:

Ext. M1 Wages Register-cum-Muster Roll of the Factory from 4-2-1976 to 30-8-1980.

Kerala Gazette No. 18 dated 3rd May 1983
PART I

GOVERNMENT OF KERALA

Labour (A) Department

NOTIFICATION

G. O. (Rt.) No. 105/83/LBR. *Dated, Trivandrum, 28th January 1983.*

The award of the Labour Court, Ernakulam in respect of the dispute between the President, Chellanam Service Co-operative Bank Limited, No. 681, South Chellanam, Cochin-7 and The workman of the above concern Shri A. P. Francis Xavier, Arackkal House, South Chellanam P.O. Cochin-7 received by Government on 7-1-1983 is hereby published under section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947).

By order of the Governor,
K. SIVADASAN,
Deputy Secretary to Government

In the Labour Court, Ernakulam

Monday, the 27th day of December, 1982

Present:

SHRI N. SUKUMARAN, B. SC., B. L.,

Presiding Officer

INDUSTRIAL DISPUTE No. 30 of 1982

Between:—

The President, Chellanam Service Co-operative Bank Ltd.
No. 681, South Chellanam, Cochin-7.

And

The workman of the above concern Shri A. P. Francis Xavier,
Arakkal House, South Chellanam P. O., Cochin-7

Representations:

Shri N. Haridas,
Advocate, Cochin-16. — For *Management.*

Shri K. P. Haridas,
Advocate,
Mulavukad P. O. — For *Workman.*

G.A. 24/V.

AWARD

Denial of employment to Shri A P Francis Xavier by a Co-operative Society is the issue referred for adjudication by Government as per G.O Rt No 535/82/LBR dated 14-5-1982.

2. The complaint of the employee is that certain allegations were raised against him on 19-12-1978 and he was asked to explain. He submitted his explanation. Thereafter it was intimated that a domestic enquiry will be conducted. But no domestic enquiry was actually held. He was not placed under suspension also. But he was denied employment when he returned from leave on 25-1-1979. There are no reasons to deny him employment and he is liable to be reinstated with all benefits.

3. The opposite Party Society entered appearance through an Advocate and requested time for filing its written statement in defence. This was on 21-6-1982. Several further adjournments were taken by the Society for filing written statement. Finally it was posted for that purpose to 22-11-1982. There was a specific direction that no further time will be granted. On 22-11-1982 there was no sitting and the case was adjourned by a notification to 13-12-1982. On that day the counsel appearing for the Management Society was absent. The written statement was also not filed. I adjourned the case again to 20-12-1982. On that day also there was no representation on behalf of the Society. Therefore it was declared ex-parte and the case proceeded in its absence.

4. The workman asked to prove his case had filed an affidavit sworn to by him in support of his claims. The affidavit is accepted and it is hereby held thas there was a denial of employment as alleged with effect from 25-1-1979. The workman naturally is entitled to reinstatement in the circumstances with continuity of service and other benefits including back wages. Back wages on the woakman's assessment comes to Rs. 15,096 (upto December 1982) on the basis that he was drawing a monthly salary of Rs. 296. This also is liable to be paid.

5. In the result an award is passed direcing the Management Society to reinstate the workman with continuity of service and other benefits including arrears of back wages to the tune of Rs. 15,096 (Rupees fifteen thousand and ninety six only). He is also entitled to future wages from 1-1-1983 till the date of reinstatement.

Ernakulam,
27-12-1982.

N. SUKUMARAN,
Presiding Officer.

GOVERNMENT OF KERALA

Labour (A) Department

NOTIFICATION

G. O. (Rt.) No. 203/83/LBR *Dated, Trivandrum, 28th February 1983.*

The award of the Labour Court, Kozhikode in respect of the dispute between The Managing Director, Palghat Wholesale Consumer Co-operative Stores Limited, 18/379, Nurani, Palghat-4 and their workman Sri. E. Balakrishna Varma, Residing at Elayachanidom, Akathethara, Palghat-8 received by Government on 18-2-1983 is hereby published under section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947).

By order of the Governor,

K. SIVADASAN,
Deputy Secretary to Government.

IN THE LABOUR COURT, KOZHIKODE, KERALA STATE

(Dated this the 25th day of January 1983)

Present.

HAJEE P. A. SHAHUL HAMEED B.A., B.L.,
Presiding Officer

In

I. D. No. 89/77

Between

MANAGEMENT

The Managing Director, Palghat Wholesale Consumer Co-operative Stores Limited 18/379, Nurani, Palghat-4.

And

WORKMAN

SHRI E. Balakrishna Varma, Residing at Elayachanidom, Akathethara, Palghat-8.

Representations

Shri K. Radhakrishnan,
Advocate, Palghat .. For the Management

Shri P. A. O. Meeran,
Advocate, Palghat .. For the Workman

AWARD

1. This industrial dispute between the Palghat Wholesale Co-operative Stores Limited No. P.525 and its workman E. Balakrishna Varma is referred to this court by the Government as per G.O. Rt. No. 1443/77/LBR dated 21-11-1977 for adjudication. The parties appeared in this court and filed statements.

2. The worker filed a statement stating that he was appointed as Manager of Ration Shop No. 9 of Koppam, Palghat and he worked as such till 1-7-1970. He received a notice on 12-8-1970 calling upon him to remit a sum of Rs. 1383.51. He stated that if credit is given to the value of damaged goods taken charge by him, no amount will be due from him. Without even any formal enquiry he was dismissed from service from 1-7-1970 onwards. The order of dismissal is perverse and malafide. He was tried in C.C. 16/74 for misappropriation. He was acquitted as per judgement dated 10-2-1976 by the Special Judge, Trichur. The value of these damaged goods is about Rs. 635. The society was not prepared to accept that amount from him. He states that he may be reinstated with effect from 1-7-1970 with full pay and allowances.

3. In the written statement filed by the Managing Director, Palghat Wholesale Consumer Co-operative Stores, it is stated that this court is not competent to decide the dispute. The worker under the society is governed by Co-operative Societies Act. The worker was a chronic delinquent who was in the habit of systematically committing malpractices by diverting for his own use or misappropriating the goods of the society entrusted to him for sale as Manager of Ration Shop. After detection of a deficit in the stock in his custody when he handed over charge of the Ration Shop and after payments made by him still there was a sum of Rs. 1383.51 due from him. He abstained from his duty without availing leave from 1-7-1970. He was suspended as per proceedings dated 30-7-1970 under rule 13 C of the Special Bye-laws relating to the service conditions of the society. Charges were framed against him and memo of charges dated 12-8-1970 was served on the worker. He remained silent. Hence he was dismissed from service. Finally it is stated that the workers like the petitioner are a menace to public institutions.

4. The worker filed a rejoinder.

5. When this case came up for hearing, the worker was examined as WW1 and the Assistant Secretary of the Society was examined as MW1. One document was

marked on behalf of the worker as Ext. W1, and 9 documents were marked on behalf of the management as Ext. M1 to M9.

6. The point to be decided is whether the dismissal of the worker is justified?

7. Worker when examined has stated that he took charge of the Ration Shop from one Louis and at the time of taking charge there was damaged goods to the value of Rs. 635. He has given a cash security of Rs. 500 in 1968. He has also given a security Bond of Rs. 2000. The cash security bears interest at 12%. He received a notice, directing him to remit Rs. 862.63. The value of damaged goods has not been deducted. His security amount also was not deducted. He has not misappropriated any amount. He states that in Ext. M1 he put his signature by force. In cross-examination he has admitted that as per Ext. M1 he has to pay a sum of Rs. 2832.48 as on 24-4-1970. He has studied upto S.S.L.C. Ext. M4 is written by him. He has no accounts with him.

8. MW1 states that WW1 was appointed as Manager of Ration Shop No. 9 on 9-11-1968. He inspected the Ration Shop on 21-3-1970 and submitted a report to the then secretary which is Ext. M1. He found out that there is a deficit of stock of goods worth Rs. 913.12. The sale proceeds of that day upto 12 Noon amounted to Rs. 2117.16, that was also not there. When questioned, worker evaded reply. Ext. M2 is the Liability Register. At page 38 of Ext. M2 it can be seen that on 21-4-1970, liability of the worker was Rs. 5176.10 but the value of stock handed over was already Rs. 2343.52. So there was a deficit of Rs. 2832.58. Ext. M3 is the notice issued to the worker for which he sent a reply which is Ext. M4. Ext. M5 is a suspension order. Ext. M6 is the reply to the suspension order. Ext. M7 is the charge memo. Ext. M8 is the reply to the charge memo. In Ext. M2 at page 38, worker has acknowledged his liability. Ext. M9 is the dismissal order. Though he was cross-examined, nothing material was brought out by the counsel for the worker during cross-examination.

9. In Ext. M2 the worker has admitted that there is a deficit of Rs. 2832.58. It is dated 24-4-1970. Ext. M3 shows that there is a deficit of Rs. 1413.51 due from him. Ext. M4 is a statement filed by him admitting his liability but requesting the balance due from him may be recovered from his pay. Ext. M5 is suspension order. Ext. M9 is the dismissal order.

10. By looking into the documentary evidence, I feel that the workman has committed gross dereliction in duty and he deserves the punishment imposed upon him. A ration shop dealer must be honest in his dealings. He is entrusted by the society for distribution of essential articles to the ration card holders. Even if there is a difference of one paisa in the accounts it will amount to misappropriation. Workers like the present worker is not entitled to be retained in service. They cannot be entrusted with any public funds. Hence in my view, the termination of service is absolutely justified but taking a sympathetic view, on the worker instead of dismissing him from service, I discharge him from service as opined by the High Court in O. P. No. 3434/79/G. An award is passed accordingly.

11. This award will come into force 30 days after publication of the same in the Official Gazette.

Dictated to the Confidential Assistant, transcribed by him, revised, corrected and passed by me on 25th day of January, 1983.

HAJEE P. A. SHAHUL HAMEED,

Presiding Officer,

Labour Court, Kozhikode.

APPENDIX

Witness examined on the side of the Workers:

WW1. Shri E. Balakrishna Varma.

Documents marked on the side of the worker:

Ext. W1. Charge taking voucher and list of Palghat W.C.C. Stores Limited dated 9-11-1978.

Witness examined on the side of the Management:

MW1. Shri Subramanian P. K.

Documents marked on the side of the Management:

Ext. M1. Letter dated 23-3-1970 of P. K. Subramanian, Assistant Secretary of Palghat W.C.C. Stores Limited addressed to the Secretary, palghat W.C.C. Stores Limited.

Ext. M2. Liability Register of Palghat W.C.C. Stores Limited for the year 1970.

Ext. M3. Memo dated 25-6-1970 of Palghat W.C.C. Stores Limited, Palghat issued to E. Balakrishna Varma, & Ex Salesman.

Ext. M4. Reply dated 29-6-1970 of E. Balakrishna Varma addressed to the Secretary Palghat W.C.C. Stores Limited.

Ext. M5. Proceedings of the Secretary, Palghat W.C.C. Stores Limited Palghat dated 30-7-1970.

Ext. M6. Letter dated 6-8-1970 of E. Balakrishna Varma addressed to the Secretary, P. W. C. C. Stores Limited, Palghat.

Ext. M7. Memorandum of charges dated 12-8-1970 signed by Secretary, Palghat W. C. C. Stores Limited, Palghat.

Ext. M8. Reply dated 22-8-1970 of E. Balakrishna Varma addressed to the Secretary, Palghat W.C.C. Stores Limited, Palghat.

Ext. M9. Proceedings of Secretary, Palghat W.C.C. Stores Limited, Palghat dated 6-11-1972.

Kerala Cazette No. 18 dated 3rd May 1983.
PART I

Section i

COVERNMENT OF KERALA

Law (Legislation-Publication) Department

NOTIFICATION

No. 6815/Leg. Pbn. 2/82/Law. *Dated, Trivandrum, 12th May*, 1932.

The following Act of Parliamen , published in a Cazette of India Extraordinary, Part II-Section 1, dated the 9th March, 1982, is hereby republished for general information. The bill as passed by the Houses of Parliament received the assent of the President on the 8th March, 1982.

By order of the Governor,
K. VISWANATHAN NAIR,
Special Secretary (Law).

THE INDUSTRIAL FINANCE CORPORATION

(AMENDMENT) ACT, 1982

(No 2 of 1982)

An

Act,

further to amend the Industrial Finance Corporation Act, 1948.

BE it enacted by Parliament in the Thirty-third Year of the Republic of India as follows :—

1. *Short title and commencement.*— (*1*) This Act may be called the Industrial Finance Corporation (Amendment) Act, 1982.

(*2*) It shall come into force on such date as the Central Government may, by notification in the Official Caztte, appoint.

2. *Amendment of section 2.*— In section 2 of the Industrial Finance Corporation Act, 1948 (15 of 1948) (hereinafter referred to as the principal Act),—

(*a*) for clause (*ba*), the following clause shall be substituted, namely :—

'(*ba*) " Court " means the High Court (or where there is no High Court and the powers of the High Court are exercised by the Court of Judicial Commissioner, such Court) within the local limits of whose jurisdiction,—

(*i*) the defendant or respondent, or where there is more than one defendant or respondent, any one of them—

(*1*) has his registered office ; or

(*2*) carries on the whole or part of his business,

at the time of the commencement of any legal proceedings against him under thisAct ; or in part, arises ;';

(*ii*) the cause of action for such legal proceedings wholly or

(*b*) for clause (*c*), the following clause shall be substituted, namely :—

'(*c*) " industrial concern " means any limited company or co-operative society incorporated by a Central Act or an Act of the Legislature of a State or under any law for the time being in force and registered in India which is engaged or is to be engaged in—

(*i*) the manufacture, preservation or processing of goods ;

(*ii*) shipping ;

(*iii*) mining :

(*iv*) the hotel industry ;

(*v*) the generation or distribution of electricity or any other form of power ;

(*vi*) the transport of passengers or goods by road or by water or by air or by ropeway or by lift ;

(*vii*) the maintenance, repair, testing or servicing of machinery of any description or vehicles or vessels or motor-boats or trailers or tractors ;

(*viii*) assembling, repairing or packing any article with the aid of machinery or power ;

(*ix*) the development of any contiguous area of land as an industrial estate ;

(*x*) fishing or providing shore facilities for fishing or maintenance thereof ;

(*xi*) providing special or technical knowledge or other services for the promotion of industrial growth ; or

(*xii*) the research and development of any process or product in relation to any of the matters aforesaid.

Explanation.— The expression " processing of goods " includes any arc or process for producing, preparing or making an article by subjecting any material to a manual, mechanical, chemical, electrical or any other like operation ;';

(*c*) clause (*g*) shall be omitted.

3. *Amendment of section 4.*— In section 4 of the principal Act, —

(*a*) after sub-section (*1A*), the following sub-sections shall be inserted, namely :—

(*1B*) On or after the commencement of the Industrial Finance Corporation (Amendment) Act, 1982, the authorised capital of the

Corporation may be increased to such amount not exceeding one hundred crores of rupees as the Central Government may, from time to time, by notification in the Official Gazette, fix.

(*1C*) The authorised capital increased under sub-sectian (*1B*) shall be divided into such number of shares of five thousand rupees each as may be necessary and the shares representing the capital so increased may be issued with the sanction of the Central Government as and when the Corporation may deem fit. ";

(*b*) in sub-section (.),

(*i*) for the words "In this section ", the words, figure and letter " In this section and in section 4A " shall be substituted ;

(*ii*) after the words and figures " under section 3 of the Life Insurance Corporation Act, 1956, " (31 of 1956) the following shall be inserted, namely :—

", the General Insurance Corporation of India formed and registered under the Companies Act, 1956 (1 of 1956) its subsidiaries and such other institution or institutions dealing with general insurance business as may be notified by the Central Government in the Official Gazette in thi behalf ".

4. *Amendment of section 4A* — In sub-section (*2*) of section 4A of thes principal Act,in the proviso, for the words "Provided that ", the following shall be substituted, namely :—

" Provided that such holders shall have the right to renounce the shares so offered to them in favour of any scheduled bank, any insurance company, any investment trust or any other like financial institution or any co-operative bank, whether or not any such institution is a shareholder :

Provided further that if any such holder does not accept the shares so offered or does not exercise the right of renunciation in respect of any such shares in favour of any institution referred to in the proeceding proviso within the time fixed therefor, the Board may allot such shares to any such institution with the concurrence of the Development Bank :

Provided also that".

5. *Amendment of section 11.*— In section 11 of the principal Act, in the proviso to sub-section (*3*), for the words " three months ", the words " six months " shall be substituted.

6. *Substitution of new section for section 16.*—For section 16 of the principal Act,the following section shall be substituted, namely :—

" 16. *Staff of Corporation.*— The Corporation may appoint such number of officers and other employees as it considers necessary or desirable for the efficient performance of its functions and determine the terms and conditions of their appointment and service. ".

7. *Amendment of section 18.*— In section 18 of the principal Act, the words ", with the previous sanction of the Development Bank ," shall be omitted.

8. *Amendment of section 19.*— In section 19 of the principal Act, th words " in consultation with the Reserve Bank," shall be omitted.

9. *Amendment of section 21.*— In section 21 of the principal Act,—

(*a*) in subsection (*1*), the proviso shall be omitted ;

(*b*) in subsection (*3*), in the proviso, for the words " three crore s", the words " fifteen crores " shall be substituted ;

(*c*). in subsection (*4*),—

(i) after the words " the Development Bank ", the words " or with the general or special approval of the Central Goverr ment, from any other authority or institution in India " sha be inserted;

(ii) the proviso shall be omitted.

10. *Insertion of new section 21C.*— After section 21B of the princip Act, the following section shall be inserted, namely :—

" *21C. Power to acquire rights.*— The Corporation shall have the right to acquire, by transfer or assignment, the rights and interests of any public financial institution as defined in section 4A of the Companies Act, 1956 (1 of 1956) (including any other rights incidental thereto), in relation to any loan or advance granted, or any amount recoverable, by such instituion, either in whole or in part, by the execution or issue of any instrument, or by the transfer of any instrument by endorsement or in any other manner.".

11. *Substitution of new section for section 22.*— For section 22 of the principal Act, the following section shall be substituted, namely:—

" 22. *Deposits with the Corporation.*—The Corporation may accept deposits repayable after the expiry of a period which shall not be less than twelve months from the date of the making of the deposit on such terms and conditions as may, generally or specially, he approved by the Development Bank.".

12. *Amendment of section 23.*— In section 23 of the principal Act,—

(*a*) in subsection (*1*) :—

(*i*) the brackets and figure " (*1*) occurring in the beginning shall be omitted ;

(*ii*) in clause (*a*),—

(*1*) the words " on such terms and conditions as may be agreed upon, " shall be omitted ;

(*2*) in sub-clause (*i*), the words "are repayable within a period not exceeding twenty-five years, and " shall be omitted ;

(*3*) in sub-clause (*ii*), for the words " or State Co-operative Banks", the words " , State Co-operative Banks or sucl other financial institutions as may be notified by the Central Government in this behalf " shall be substituted;

(*iii*) for clause (*b*), the following clause shall be substituted, namely :—

"(*b*) guaranteeing deferred payments due from any industrial concern;";

(*iv*) in clause (*c*), the words ",on such terms and conditions as may be agreed upon," shall be omitted ;

(*v*) for clause (*f*), following clause shall be substituted, namely :—

"(*f*) subscribing to, or purchasing, the stock, shares or bonds of any industrial concern;";

(*vi*) in clause (*i*),—

(*1*) for the portion beginning with the words " or subscribing to debentures " and ending with the words " as the case may be ; "; the words " or subscribing to, or purchasing, debentures of industrial concerns :" shall be substituted ;

(*2*) in the proviso, after the words "subscribing to", the words, " or purchasing, " shall be inserted ;

(*3*) in the *Explanation*, for the words" loan or advance", at both the places where they occur, the words "loan, advance or debenture"shall be substituted ;

(*vii*) after clause (*i*), the following clauses shall be inserted, namely:—

" (*j*) undertaking research and surveys for evaluating or dealing with marketing or investments and undertaking and carrying on techno-economic studies in connection with the development of industry ;

(k) providing technical and administrative assistance to any industrial concern for the promotion, management or expansion of any industry :

(*l*) undertaking merchant banking operations ;

(*m*) performing functions entrusted to, or required of the Corporation by this Act or by any other law for the time being in force ;";

(*viii*) clauses (*ii*) and (*iii*) shall be re-lettered as clauses (*n*)and (*o*) respectively ;

(*ix*) clause (*j*) shall be re-lettered as clause (*p*), and in clause (*p*) as so re-lettered, after the words " under this Act ", the words " or under any other law for the time being in force " shall be inserted ;

(*b*) subsection (*2*) shall be omitted.

13. *Omission of section 24.*— Section 24 of the principal Act shall be omitted.

14. *Amendment of section 26.*— In section 26 of the principal Act, in sub-section (*3*), after clause (*ii*), the following clause shall be inserted, namely :—

"(*iii*) shall not apply to any industrial concern in respect of which the Corporation is satisfied that it is necessary, in the

G. 717/V.

public interest, to enter into business with that concern:

Provided that such business shall be entered into in accordance with and subject to such conditions and limitations as may be prescribed by regulations made in this behalf.".

15. *Amendment of section 33*.— In section 33 of the principal Act, in subsection (*1*), for the words "three months", the words "four months" shall be substituted.

16. *Insertion of new section 34A*.— After section 34 of the principal Act, the following section shall be inserted, namely :—

"34A. *Appointment of local auditors*.— The Board may, in consultation with the auditors appointed under sectiin 34, appoint local auditors to audit the affairs of any office or agency of the Corporation and the report of such auditors shall be taken into consideration by the auditors appointed under section 34 for the purpose of auditing the affairs of the Corporation.".

17. *Amendment of section 35*.— In section 35 of the principal Act,—

(*a*) in sub-section (*1*), for the words "all shareholders", the words "the Development Bank" shall be substituted;

(*b*) in sub-section (*3*), for the words "four months", the words "five months" shall be substituted.

18. *Amendment of section 39*.— In section 39 of the principal Act, after the word "auditor", the words "local auditor," shall be inserted.

19. *Amendment of section 43*.— In section 43 of the principal Act,—

(*a*) in subsection (*2*), for clause (*h*), the following clause shall be substituted, namely :—

"(*h*) the conditions and limitations subject to which the Corporation may enter into business under the proviso to clause (*iii*) of subsection (*3*) of section 26;";

(*b*) after subsection (2) the following subsection shall be inserted, namely:—

"(*3*) Every regulation made under this section shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the regulation or both Houses agree that the regulation should not be made, the regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that regulation.".

GOVERNMENT OF KERALA

Law (Legislation-Publication) Department

NOTIFICATION

No. 11865/Leg. Pbn. 2/82-I/Law. *Dated, Trivandrum, 18th August, 1982.*

The following Act of Parliament, published in a Gazette of India Extraordinary, Part II—Section 1, dated the 31st March, 1982 is hereby republished for general information. The Bill as passed by the Houses of Parliament received the assent of the President on the 31st March, 1982.

By order of the Governor,
K. Viswanathan Nair,
Special Secretary (Law).

THE KERALA APPROPRIATION ACT, 1982

An

ACT

to authorise payment and appropriation of certain further sums from and out of the Consolidated Fund of the State of Kerala for the services of the financial year 1981-82.

Be it enacted by Parliment in the Thirty-third Year of the Republic of India as follows :—

1. *Short title.*—This Act may be called the Kerala Appropriation Act, 1982.

2. *Issue of Rs. 487, 94, 22,600 out of the Consolidated Fund of the State of Kerala for the financial year 1981-82.*—From and out of the Consolidated Fund of the State of Kerala there may be paid and applied sums not exceeding those specified in column 3 of the Schedule amounting in the aggregate to the sum of four hundred and eighty-seven crores, ninety-four lakhs, twenty-two thousand and six hundred rupees towards defraying the several charges which will come in course of payment during the financial year 1981-82, in respect of the services specified in column 2 of the Schedule.

3. *Appropriation.*—The sums authorised to be paid and applied from and out of the Consolidated Fund of the State of Kerala by this Act shall be appropriated for the services and purposes expressed in the Schedule in relation to the said year.

G. 1224/V.

THE SCHEDULE

(*See* sections 2 and 3)

(1)	(2)		(3)		
No. of Vote/ Appropriation	Services and purposes		Sums not exceeding		
			Voted by Parliament	Charged on the Consolidated Fund	Total
			Rs.	Rs.	Rs.
I	State Legislature	Revenue	11,50,000	25,000	11,75,000
II	Heads of States, Ministers and Headquarters staff	Revenue	63,95,000	14,89,100	78,84,100
III	Administration of Justice	Revenue	50,20,500	4,66,000	54,86,500
V	Agricultural Income Tax and Sales Tax	Revenue	36,85,400	..	36,85,400
VI	Land Revenue	Revenue	1,52,79,000	..	1,52,79,000
VII	Stamps and Registration Fees	Revenue	2,00,000	..	2,[illegible]0,000
VIII	Excise	Revenue	100	..	100
IX	Taxes on Vehicles	Revenue	3,34,300	..	3,34,300
	Debt Charges	Revenue	..	3,87,40,600	3,87,40,600
X	Treasury and Accounts	Revenue	25,34,000	..	25,34,000
XI	District Administration and Miscellaneous	Revenue	67,04,700	6,600	67,11,300
XIII	Jails	Revenue	11,03,400	..	11,03,400
XIV	Stationery and Printing and other Administrative Services	Revenue	32,89,900	..	32,89,900
XV	Public Works	Revenue	4,86,84,100	..	4,86,84,100
		Capital	2,09,35,900	29,69,500	2,39,05,400
XVI	Pensions and Miscellaneous	Revenue	6,49,21,400	9,22,[illegible]00	6,58,43,500

XVII	Education, Art and Culture	Revenue	1,09,63 000	..	1,09,63,000
		Capital	3,24,50,300	50,000	3,25,00,300
XVIII	Medical	Revenue	2,25,21,000	..	2,25,21,000
		Capital	26,86,500	3,58,000	30,44,500
XIX	Family Welfare	Capital	4,00,000	..	4,00,000
XX	Public Health	Revenue	18,00,000	..	18,00,000
XXI	Public Health Engineering	Revenue	1,16,57,900	..	1,16,57,900
		Capital	2,51,25,000	..	2,51,25,000
XXII	Housing	Revenue	65,00,000	..	65,00,000
		Capital	1,17,77,100		1,17,77,100
XXIII	Urban Development	Revenue	7,12,500	..	7,12,500
XXIV	Information and Publicity	Revenue	44,89,200	..	44,89,200
XXV	Labour and Employment	Revenue	44,72,000	3,000	44,75,000
XXVI	Social Welfare including Harijan Welfare	Revenue	4,54,78,100	94,900	4,55,73,000
		Capital	1,02,36,900	..	1,02,36,900
XXVII	Famine	Revenue	19,86,800	..	19,86,800
XXVIII	Co-operation	Revenue	26,00,100	..	26,00,100
		Capital	2,82,54,400	..	2,82,54,400
XXIX	Miscellaneous Economic Services	Revenue	5,18,400	5,300	5,23,700
XXX	Agriculture	Revenue	500	..	500
		Capital	97,00,000	..	97,00,000
XXXII	Animal Husbandry	Revenue	70,20,000	2,300	70,22,300
XXXV	Forest	Revenue	1,92,88,500	..	1,92,88,500
		Capital	50,00,000	..	50,00,000
XXXVI	Community Development	Revenue	80,98,700	25,500	81,24,200
XXXVII	Industries	Revenue	84,01,200	..	84,01,200
		Capital	91,85,500	..	91,85,500
XXXVIII	Irrigation	Revenue	3,41,12,200	22,800	3,41,35,000
		Capital	2,66,500	55,61,200	58,27,700
XXXIX	Power	Capital	51,54,000	..	51,54,000

(1)	(2)		(3)		
			Rs.	Rs	Rs.
XL	Ports	Revenue	1,26,100	..	1,26,100
		Capital	25,00,000	..	25,00,000
XLI	Transport	Revenue	23,75,000	..	23,75,000
		Capital	3,00,000	..	3,00,000
XLII	Tourism	Revenue	13,08,200	93,000	14,01,200
		Capital	22,00,000	..	22,00,000
	Public Debt Repayment	Capital	..	430,86,84,400	430,86,84,400
	Total		51,99,03,300	435,95,19,300	487,94,22,600

GOVERNMENT OF KERALA

Law (Legislation-Publication) Department

NOTIFICATION

No. 3591/Leg. Pbn. 2/83/Law. *Dated, Trivandrum, 3rd March* 1983.

The following Act of Parliament, published in a Gazette of India Extraordinary, Part II-Section 1, dated the 10th November, 1982, is hereby republished for general information. The Bill as passed by the Houses of Parliament received the assent of the President on the 9th November, 1982.

By order of the Governor,
K. VISWANATHAN NAIR,
Special Secretary (Law).

THE INTERNATIONAL MONETARY FUND AND BANK (AMENDMENT) ACT, 1982

(CENTRAL ACT 67 of 1982)

An

Act

further to amend the International Monetary Fund and Bank Act, 1945

BE it enacted by Parliament in the Thirty-third Year of the Republic of India as follows:—

1. *Short title and commencement.*—(1) This Act may be called the International Monetary Fund and Bank (Amendment) Act, 1982.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. *Amendment of section* 2.—In section 2 of the International Monetary Fund and Bank Act, 1945 (hereinafter referred to as the principal Act),—

(1) in sub-section (1),—

(*a*) in clause (*a*), the words, brackets, letter and figure ", and paragraph (*a*) of section 4," shall be omitted;

(*b*) in clause (*b*), for the words, brackets, letter and figures "paragraph (*b*) of section 8 of Article IV", the words and figures "section 11 of Article V" shall be substituted ;

(*c*) in clause (*c*), for the word and figures "Article XXVI", the word and figures "Article XX" shall be substituted ;

(*d*) in clause (*dd*), for the word and figures "Article XXVI", the word and figures "Article XX" shall be substituted;

(*e*) in clause (e), for the words and letters "Schedule D or Schedule E", the words and letters 'Schedule I, Schedule J or Schedule K" shall be substituted;

(2) in sub-section (2), for the word and figure "section 5", the word and figure ' section 4" shall be substituted.

3. *Amendment of section* 4.—In section 4 of the principal Act,—

(1) in sub-section (1), after the words "Where under", the words, brackets, letter and figures "paragraph (*b*) of section 3 of Article IV or" shall be inserted;

(2) in sub-section (3), the portion beginning with the words "and the provisions of" and ending with the words "in that section" shall be omitted.

4. *Amendment of section* 7.—In sub-section (2) of section 7 of the principal Act, for the words "in two successive sessions", the words "in two or more successive sessions", and for the words "the session in which it is so laid or the session immediately following", the words "the session immediately following the session or the successive sessions aforesaid" shall be substituted.

5. *Amendment to Schedule to Act.*—In the Schedule to the principal Act, in Part I,—

(1) in Article IX,—

(*a*) in section 6, for the word "operations", the word "activities" shall be substituted;

(*b*) in section 8 for the words "officers and employees", the words, figures, brackets and letter "members of committees, representatives appointed under Article XII, section 3(*j*), advisers of any of the foregoing persons, officers and employees" shall be substituted;

(2) after Article IX, the following Article shall be inserted, namely:—

"ARTICLE XXI

ADMINISTRATION OF THE GENERAL DEPARTMENT AND THE SPECIAL DRAWING RIGHTS DEPARTMENT

(*a*) * * * * *

(*b*) In addition to the privileges and immunities that are accorded under Article IX of this Agreement, no tax of any kind shall be levied on special drawing rights or on operations or transactions in special drawing rights."

GOVERNMENT OF KERALA

Law (Legislation-Publication) Department

NOTIFICATION

No. 4197/Leg. Pbn. 2/83/Law. *Dated, Trivandrum, 15th March* 1983.

The following Act of Parliament, published in a Gazette of India Extraordinary, Part II, Section I, dated the 8th November, 1982, is hereby republished for general information. The Bill as passed by the Houses of Parliament received the assent of the President on the 6th November, 1982.

By order of the Governor,

K. Viswanathan Nair,

Special Secretary to Government (Law).

THE ANTI-HIJACKING ACT, 1982

(Central Act 65 of 1982)

An

Act

to give effect to the Convention for the Suppression of Unlawful Seizure of Aircraft and for matters connected therewith.

Whereas a Convention for the Suppression of Unlawful Seizure of Aircraft was on the 16th day of December, 1970, signed at The Hague;

And whereas it is expedient that India should accede to the said Convention and make provisions for giving effect thereto and for matters conneted therewith;

Be it enacted by Parliament in the Thirty-third Year of the Republic of India as follows;—

CHAPTER I

PRELIMINARY

1. *Short title, extent, application and commencement.*—(1) This Act may be called the Anti-Hijacking Act, 1982.

(2) It extends to the whole of India and, save as otherwise provided in this Act, it applies also to any offence thereunder committed outside India by any person.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. *Definitions*.—In this Act, unless the context otherwise requires,—

(a) "aircraft" means any aircraft, whether or not registered in India, other than a military aircraft or an aircraft used in customs or police service;

(b) "aircraft registered in India" means an aircraft which is for the time being registered in India;

(c) "Convention country" means a country in which the Hague Convention is for the time being in force;

(d) "Hague Convention" means the Convention for the Suppression of Unlawful Seizure of Aircraft signed at The Hague on the 16th day of December, 1970;

(e) "military aircraft" means an aircraft of the naval, military, air force or any other armed forces of any country and includes every aircraft commanded for the time being by a person in any such force detailed for the purpose.

CHAPTER II

HIJACKING AND CONNECTED OFFENCES

3. *Hijacking*.—(1) Whoever on board an aircraft in flight, unlawfully, by force or threat of force or by any other form of intimidation, seizes or exercises control of that aircraft, commits the offence of hijacking of such aircraft.

(2) Whoever attempts to commit any of the acts referred to in sub-section (1) in relation to any aircraft, or abets the commission of any such act, shall also be deemed to have committed the offence of hijacking of such aircraft.

(3) For the purposes of this section, an aircraft shall be deemed to be in flight at any time from the moment when all its external doors are closed following embarkation, until the moment when any such door is opened for disembarkation, and in the case of forced landing, the flight shall be deemed to continue until the competent authorities of the country in which such forced landing takes place take over the responsibility for the aircraft and for persons and property on board.

4. *Punishment for hijacking*.—Whoever commits the offence of hijacking shall be punished with imprisonment for life and shall also be liable to fine.

5. *Punishment for acts of violence connected with hijacking*.—Whoever, being a person committing the offence of hijacking of an aircraft, commits, in connection with such offence, any act of violence against any passenger or member of the crew such aircraft, shall be punished with the same punishment with which he would have been punishable under any law for the time being in force in India if such act had been committed in India.

6. *Jurisdiction.*—(1) Subject to the provisions of subsection (2), where an offence under section 4 or section 5 is committed outside India, the person committing such offence may be dealt with in respect thereof as if such offence had been committed at any place within India at which he may be found.

(2) No court shall take cognizance of an offence punishable under section 4 or section 5 which is committed outside India unless—

(a) such offence is committed on board an aircraft registered in India;

(b) such offence is committed on board an aircraft which is for the time being leased without crew to a lessee who has his principal place of business or where he has no such place of business, his permanent residence in India; or

(c) the alleged offender is a citizen of India or is on board the aircraft in relation to which such offence is committed when it lands in India or is found in India.

CHAPTER III

MISCELLANEOUS

7. *Provisions as to extradition.*—(1) The offences under section 4 and section 5 shall be deemed to have been included as extraditable offences and provided for in all the extradition treaties made by India with Convention countries and which extend to, and are binding on, India on the date of commencement of this Act.

(2) For the purposes of the application of the Extradition Act, 1962 (34 of 1962) to offences under this Act, any aircraft registered in a Convention country shall, at any time while that aircraft is in flight, be deemed to be within the jurisdiction of that country, whether or not it is for the time being also within the jurisdiction of any other country.

8. *Contracting Parties to Convention.*—The Central Government may, by notification in the Official Gazette, certify as to who are the contracting parties to the Hague Convention and to what extent they have availed themselves of the provisions of the Convention, and any such notification shall be conclusive evidence of the matters certified therein.

9. *Power to treat certain aircraft to be registered in Convention countries.*—If the Central Government is satisfied that the requirements of Article 5 of the Hague Convention have been satisfied in relation to any aircraft, it may, by notification in the Official Gazette, direct such aircraft shall, for the purposes of this Act, be treated as registered in such Convention country as may be spcified in the notification.

10. *Previous sanction necessary for prosecution.*—No prosecution for an offence under this Act shall be instituted except with the previous sanction of the Central Government.

11. *Protection of action taken in good faith.*—(1) No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done in pursuance of the provisions of this Act.

(2) No suit or other legal proceeding shall lie against the Central Government for any damage caused or likely to be caused for anything which is in good faith done or intended to be done in pursuance of the provisions of this Act.

GOVERNMENT OF KERALA

Law (Legislation-Publication) Department

NOTIFICATION

No. 3590/Leg.Pbn. 2/83/Law. *Dated, Trivandrum 7th March*, 1983.

The following Act of Parliament, published in a Gazette of India Extraordinary, Part-II, Section 1, dated the 6th November, 1982, is hereby republished for general information. The Bill as passed by the Houses of Parliament received the assent of the President on the 6th November, 1982.

By order of the Governor,

K. VISWANATHAN NAIR,
Special Secretary to Government (Law)

THE SALARY, ALLOWANCES AND PENSION OF MEMBERS OF PARLIAMENT (SECOND AMENDMENT) ACT, 1982

(Central Act No. 61 of 1982)

AN

ACT

further to amend the Salary, Allowances and Pension of Members of Parliament Act, 1954.

BE it enacted by Parliament in the Thirty-third Year of the Republic of India as follows:—

1. *Short title.*—This Act may be called the Salary, Allawances and Pension of Members of Parliament (Second Amendment) Act, 1982.

2. *Amendment of section* 4.—In section 4 of the Salary, Allowances and Pension of Members of Parliament Act, 1954 (30 of 1954) (hereinafter referred to as the principal Act), in sub-section (1),—

(*a*). in clause (*a*). for the words "third class", the words "second class" shall be substituted;

(*b*) in sub-clause (*ii*) of clause (*c*), for the words "at the rate of one rupee per kilometer", the words "at the rate of one rupee and thirty paise per kilometer or at such higher rate as may be prescribed by rules made under section 9 having regard to the highest rate allowed to a Central Government officer of the First Grade in respect of road journeys" shall be substituted.

3. *Amendment of section 6B.*—In section 6B of the principal Act,—

(*a*) in clause (*ii*), for the words "third class", the words "first class" shall be substituted;

(*b*) in clause (*iii*), after the words "every session", the words "and if such journey or any part thereof is performed by air, to an amount equal to the fare by air for such journey or part thereof" shall be inserted;

(*c*) in the proviso,—

(*i*) for the words "third class", wherever they occur, the words "first class" shall be substituted;

(*ii*) for the words "shall be deducted from the difference referred to in that clause.", the words "shall be adjusted against the difference referred to in that clause; so, however, that the member shall not be entitled to claim the balance of such first class are left after such adjustment." shall be substituted.

4. *Amendment of section 9.*—In section 9 of the Principal Act, in sub-section (3), after clause (*c*), the following clause shall be inserted, namely:—

"(*cc*) the rate at which road mileage shall be paid under sub-clause (*ii*) of clause (*c*) of sub-section (1) of section 4;".

GOVERNMENT OF KERALA

Law (Legislation-Publication) Department

NOTIFICATION

No. 4195/Leg. Pon. 2/83/Law. *Dated, Trivandrum,* 21*st March* 1983.

The following Act of Parliament, published in a Gazette of India Extraordinary, Part II, Section 1, dated the 8th November, 1982 is hereby republished for general information. The Bill as passed by the Houses of Parliament received the assent of the President on the 6th November, 1983

By order of the Governor,
K. VISWANATHAN NAIR,
Special Secretary to Government (*Law*)

THE SUPPRESSION OF UNLAWFUL ACTS AGAINST SAFETY OF CIVIL AVIATION ACT, 1982

(Central Act No. 66 of 1982)

An

Act

to give effect to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation and for matters connected therewith.

WHEREAS a Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation was, on the 23rd day of September, 1971, signed at Montreal;

AND WHEREAS it is expedient that India should accede to the said convention and make provisions for giving effect thereto and for matters connected therewith;

BE it enacted by Parliament in the Thirty-third Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. *Short title, extent, application and commencement.*—(1) This Act may be called the Suppression of Unlawful Acts against Safety of Civil Aviation Act, 1982.

(2) It extends to the whole of India and, save as otherwise provided in this Act, it applies also to any offence under section 3 committed outside India by any person.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. *Definitions* —(1) In this Act, unless the context otherwise requires,—

(*a*) "aircraft" means any aircraft, whether or not registered in India, other than a military aircraft or an aircraft used in customs or police service ;

(*b*) "aircraft registered in India" means an aircraft which is for the time being registered in India;

(*c*) "Convention country" means a country in which the Montreal Convention is for the time being in force ;

(*d*) "military aircraft" means an aircraft of the naval, military, air force or any other armed forces of any country and includes every aircraft commanded for the time being by a person in such force detailed for the purpose ;

(*e*) "Montreal Convention" means the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation signed at Montreal on the 23rd day of September, 1971.

(2) For the purpose of this Act,—

(*a*) an aircraft shall be deemed to be in flight at any time from the moment when all its external doors are closed following embarkation until the moment when any such door is opened for disembarkation, and in the case of a forced landing, the flight shall be deemed to continue until the competent authorities of the country in which such forced landing takes place take over the responsibility for the aircraft and for persons and property on board ;

(*b*) an aircraft shall be deemed to be in service from the beginning of the pre-flight preparation of the aircraft by the ground staff or by the crew for a specific flight until twenty-four hours after any landing and the period of such service shall include the entire period during which the aircraft is in flight.

CHAPTER II

OFFENCES

3. *Offence of committing violence on board an aircraft in flight, etc.*— (1) Whoever unlawfully and intentionally—

(*a*) commits an act of violence against a person on board an aircraft in flight which is likely to endanger the safety of such aircraft; or

(*b*) destroys an aircraft in service or causes damage to such aircraft in such a manner as to render it incapable of flight or which is likely to endanger its safety in flight; or

(*c*) places or causes to be placed on an aircraft in service, by any means whatsoever, a device or substance which is likely to destroy that

aircraft, or to cause damage to it which renders it incapable of flight, or to cause damage to it which is likely to endanger its safety in flight; or

(*d*) communicates such information which he knows to be fales so as to endanger the safety of an aircraft in flight,

shall be punished with imprisonment for life and shall also be liable to fine.

(*2*) Whoever attempts to commit, or abets the commission of, any offence under sub-section (*1*) shall also be deemed to have committed such offence and shall be punished with the punishment provided for such offence.

4. *Destruction of, or damage to, air navigation facilities.*—(*1*) Whoever unlawfully and intentionally destroys or damages air navigation facilities or interferes with their operation in such a manner as is likely to endanger the safety of the aircraft in flight shall be punished with imprisonment for life and shall also be liable to fine.

(*2*) Whoever attempts to commit, or abets the commission of, any offence under sub-section (*1*) shall also be deemed to have committed such offence and shall be punished with the punishment provided for such offence.

5. *Jurisdiction.*—(*1*) Subject to the provisions of subsection (*2*), where an offence under section 3 is committed outside India, the person committing such offence may be dealt with in respect thereof as if such offence had been committed at any place with in India at which he may be found.

(*2*) No court shall take cognizance of an offence punishable under section 3 which is committed outside India unless—

(*a*) such offence is committed on board an aircraft registered in India;

(*b*) such offence is committed on board an aircraft which is for the time being leased without crew to a lessee who has his principal place of business, or where he has no such place of business, his permanent residence in India; or

(*c*) the alleged offender is a citizen of India or is on board the aircraft in relation to which such offence is committed when it lands in India or is found in India.

CHAPTER III

Miscellaneous

6. *Provisions as to extradition.*—(*1*) The offences under section 3 and section 4 shall be deemed to have been included as extraditable offences and provided for in all the extradition treaties made by India with Convention countries and which extend to, and are binding on India on the date of commencement of this Act.

(*2*) For the purposes of the application of the Extradition Act, 1962 (34 of 1962) to offences under this Act, any aircraft registered in a Convention country shall' at any time while that aircraft is in flight, be deemed to be within the jurisdiction of that country, whether or not it is for the time being also within the jurisdiction of any other country.

7. *Contracting parties to Convention.*—The Central Government may by notification in the Official Gazette, certify as to who are the contracting parties to the Montreal Convention and to what extent they have availed themselves of the provisions of the Convention, and any such notification shall be conclusive evidence of the matters certified therein.

8. *Power to treat certain aircraft to be registered in Convention countries.*—If the Central Government is satisfied that the requirements of Article 9 of the Montreal Convention have been satisfied in relation to any aircraft, it may, by notification in the Official Gazette, direct that such aircraft shall, for the purposes of this Act, be treated as registered in such Convention country as may be specified in the notification.

9. *Previous sanction necessary for prosecution.*—No prosecution for an offence under this Act shall be instituted except with the previous sanction of the Central Government.

10. *Protection of action taken in good faith.*—(*1*) No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done in pursuance of the provisions of this Act.

(2) No suit or other legal proceding shall lie agaist the Central Government for any damage caused or likely to be caused for anything which is in good faith done or intended to be done in pursuance of the provisions of this Act.

Kerala Gazette No. 18 dated 3rd May 1983.
PART I **Section iv**

GOVERNMENT OF KERALA

Law (Legislation-Publication) Department

NOTIFICATION

No. 4194/Leg. Pbn. 2/83/Law. *Dated, Trivandrum, 21st March* 1983.

The following Act of Parliament, published in a Gazette of India Extraordinary, Part II-Section 1, dated the 13th November, 1982, is hereby republished for general information. The Bill as passed by the Houses of Parliament received the assent of the President on the 13th November, 1982.

By order of the Governor,

K. VISWANATHAN NAIR,
Special Secretary to Government (Law).

THE SALES PROMOTION EMPLOYEES (CONDITIONS OF SERVICE) AMENDMENT ACT, 1982

(Central Act No. 69 of 1982)

AN

ACT

to amend the Sales Promotion Employees (Conditions of Service) Act, 1976

Be it enacted by Parliament in the Thirty-third Year of the Republic of India as follows:—

1. *Short Title.*—This Act may be called the Sales Promotion Employees (Conditions of Service) Amendment Act, 1982.

2. *Insertion of new section* 11 A.—In the Sales Promotion Employees (Conditions of Service) Act, 1976 (11 of 1976) (hereinafter referred to as the principal Act), after section 11, the following section shall be inserted, and shall be deemed always to have been inserted, namely:—

"11 A. *Effect of laws and agreements inconsistent with this Act.*—(1) The provisions of this Act or of any rule made thereunder shall have effect, notwithstanding anything inconsistent therewith contained in any other law or in the terms of any award, agreement, settlement or contract of service, whether made before or after the coming into force of this Act :

Provided that where under any such law, award, agreement, settlement or contract of service, a sales promotion employee is entitled to benefits in respect of any matter which are more favourable to him than those to which he would be entitled under this Act, the sales promotion employee shall continue to be entitled to the more favourable benefits in respect of that matter, notwithstanding that he is entitled to receive benefits in respect of other matters under this Act.

(2) Nothing contained in this Act shall be construed to preclude a sales promotion employee from entering into an agreement with his employer for granting him rights or privileges in respect of any matter which are more favourable to him than those to which he would be entitled under this Act.".

3. *Saving.*—Notwithstanding the retrospective operation of section 11 A, as inserted in the principal Act by section 2 of this Act, no contravention of, or no failure to comply with, any of the other provisions of the principal Act or of any rule made thereunder shall render any person guilty of any offence if such contravention of failure —

(*a*) occurred before the date of coming into force of this Act, and

(b) would not have been punishable as an offence if section 2 of this Act had not come into force.

Kerala Gazette No. 18 dated 3rd May 1983.
PART I **Section iv**



GOVERNMENT OF KERALA

General Education (D) Department

NOTIFICATION

G.O. (P) 48/83/G. Edn. *Dated, Trivandrum, 25th March* 1983.

S.R.O.No. 483/83. —In exercise of the powers conferred by section4 of he Kerala Education Act, 1958 (6 of 1959), the Government of Kerala hereby reconstitute the State Education Advisory Board consisting of the following members, namely:—

1.	Prof. Samuel Mathai, Surama Pongumood, Trivandrum-695011	Chairman
2.	The Vice Chancellor, Kerala University	Ex-officio Member
3.	The Director of Technical Education, Trivandrum	do.
4.	The Director of Health Services, Trivandrum	do.
5	The Director of Public Instruction, Trivandrum	do.
6.	Shri Kainikkara M. Kumara Pillai, 'Shanti' Poojapura, Trivandrum-12	Member
7.	Rev. Fr. Geevarghese Panicker, Retired Principal, Rector, St. Joseph's Pontifical Seminary, Alwaye-653103.	do.
8.	Shri A. P. Udayabhanu, Narayaneeyam, Medical College P.O., Trivandrum-695001	do.
9.	Prof. Sukumar Azhikode, Professor and Head of Department, Department of Malayalam, Calicut University P.O., Calicut-673635.	do.

10. Prof. P.I. Devasia, St. Thomas College, Palai. — Member

11. Prof. P. K. B. Nair, Professor of Malayalam, Sree Vilas, Mathirapally, Kothamangalam. — do.

12. Shri N. J. Thomas, Nandikunnel, High School Assistant, Punnathura P.O., Kidangoor South, Ettumannoor. — do.

13. Shri A.K. Abdulla, Retired District Educational officer, Vidya Vilas, P.O. Eriyad, Kodungalloor, Trichur District, Pin-680666 — do.

14. Prof. Sankaradasan Thampi, Retired Principal, Law College, Santhinagar, Trivandrum. — do.

15. Smt. Lizy Jacob, Director of Collegiate Education, Trivandrum. — do.

2. The term of office of the members of the Board, other than the Ex-officio members, shall be three years.

By order of the Governor,

K. PRABHAKARAN,

Joint Secretary to Government.

Explanatory Note

(This does not form part of the notification, but is intended to indicate its general purport.)

The term of the State Advisory Board constituted as per G.O. (P) 49/79/G. Edn. dated 28-3-1979 has expired. Government have decided to reconstitute the Board. This notification is intended to achieve the above object.

GOVERNMENT OF KERALA

Higher Education (H) Department

NOTIFICATION

No. 18574/H3/81/H.Edn. *Dated, Trivandrum,* 19*th April* 1983.

S. R. O. No. 484/83.—Whereas the Government of Kerala are of opinion that the "Mangala Devi" Temple in Idukki District and an area of 0.2470 Hectares around it and more particularly described in the schedule below, should be declared to be a protected monument for the purpose of the Kerala Ancient Monuments and Archaeological Sites and Remains Act, 1968 (26 of 1969).

Now, therefore, under sub-section (1) of section 4 of the said Act, the Government of Kerala hereby give notice of their intention to do so after two months from 30-4-1983.

Any objection received from any person interested in the said ancient monument within two months after the date specified above will be considered by the Government. The objection shall be addressed to the Special Secretary to Government, Culture, Higher Education (H) Department, Government Secretariat, Trivandrum.

Schedule

Sl. No.	*Name of Village/ Taluk and District*	*Name of monument and Extent of site*	*Sy. No.*	*Boundaries*
1.	Periyar Village Peermade Taluk, Idukki District	Mangala Devi Temple and an area of 00.2470 Hectares	30/1	*North West, West and South* Idukki District Peermade Village Sy. No. 30/1 Reserve Forest. *North East and East* Tamil Nadu, Madurai District, Reserve Forest.

By order of the Governor,

R. Ramachandran Nair,
Special Secretary to Government (Culture).

Explanatory Note

(This does not form part of the Notification, but is intended to indicate its general purport).

The Director of Archaeology has reported the necessity to declare the Mangala Devi Temple as a protected monument. According to section 4 (1) of the Kerala Ancient Monuments and Archaeological Sites and Remains Act, 1968 a preliminary notification has to be published in the matter. This Notification is intended to achieve the above object.



GOVERNMENT OF KERALA

Taxes (E) Department

ORDER

G. O. (P) No. 7/83/TD. *Dated, Trivandrum, 8th February* 1983.

S. R. O. No. 485/83.—In exercise of the powers conferred by clause (a) of sub section (1) of section 9 of the Kerala Stamp Act, 1959, (17 of 1959) and in supersession of the order published under notification G.O. (P) No. 100/81/TD. dated the 31st October, 1981 as S. R.O. No. 1515/81 in Part I of the Kerala Gazette No. 52 dated the 29th December, 1981 the Government of Kerala, being of opinion that it is necessary in the public interest so to do, hereby remit the duty not exceeding Rs. 25,000 (Rupees twenty five thousand only) with which the gift deed in respect of an extent of 0.64 hectare of land comprised in survey numbers 19 and 20 of Vijayapuram Village in Kottayam Taluk in Kottayam District, to be executed by the Kottayam Municipal Council represented by the Municipal Commissioner, Kottayam Municipality, in favour of the District Sports Council, Kottayam represented by its President, for the purpose of constructing an Indoor Stadium, is chargeable under the said Act.

By order of the Governor,

PALAT MOHANDAS,
Secretary to Government (Taxes).

Explanatory Note

(This does not form part of the notificaton but is intended to indicate its general purport).

In G.O. Rt. No. 1183/81/LA&SW dated 30-3-1981, Government have accorded sanction to the Municipal Council, Kottayam, for the transfer of 1 acre 60 cents (0.64 hectare) of land in Survey numbers 19 and 20 of Vijayapuram Village, in Kottayam Taluk to the District Sports Council, Kottayam, free of cost, for constructing an Indoor Stadium. The District Collector, Kottayam and President of the District Sports Council, Kottayam has requested that the proposed gift deed may be exempted from payment of stamp duty. As per G.O. (P) 100/81/TD. dated 31-10-1981 published in the Gazette No. 52 dated 29th December, 1981 as S.R.O. No. 1515/81, Government had earlier given sanction for remission of one fourth of the amount of stamp duty payable for executing the above gift deed. Now the Government have reconsidered their earlier decision and they propose to give remission of stamp duty (not exceeding Rs. 25,000) payable for executing the above gift deed in favour of the District Sports Council, Kottayam. The above order is intended to achieve this object.

Kerala Gazette No. 18 dated 3rd May 1983.
PART I **Section iv**



GOVERNMENT OF KERALA

Transport, Fisheries and Ports (E) Department

NOTIFICATION

G.O. (P) 5/83/TF&PD. *Dated, Trivandrum, 10th February* 1983.

S. R. O. No. 486/83.—In exercise of the powers conferred by the proviso to section 7 of the Kerala Marine Fishing Regulation Act, 1980 (10 of 1981) the Government of Kerala hereby specify that nothing in the said section 7 shall apply to any fishing vessel, which was being used for fishing immediately before the commencement of the said Act for a period up to 31-3-1983 from such commencement.

By order of the Governor,

R.C. Choudhury,

Special Secretary to Government.

Explanatory Note

(This note is not part of the notification but is intended to indicate its general purport).

Section 7 of Kerala Marine Fishing Regulation Act, 1980 prohibit the fishing in any specified area using fishing vessels which are not licenced. The proviso to the said section empowers the Government to specify the period during which the provision in that section shall not apply to any fishing vessel which was being used for fishing immediately before the commencement of the said Act. This notification is intended to specify the period for the purpose.

GOVERNMENT OF KERALA

Agriculture (Farms) Department

NOTIFICATION

G.O. Ms. No. 17/83/AD. *Dated, Trivandrum, 28th January* 1983.

S. R. O. No. 487/83 —In exercise of the powers conferred by section 63 of the Kerala Agricultural University Act, 1971 (33 of 1971), the Government of Kerala hereby make the following First Statutes prescribing the method of appointment, qualifications, salary and allowances, age limit and duties in respect of the post of Steward under the Kerala Agricultural University, namely:—

1. *Method of appointment*:—Appointment to the post shall be by direct recruitment.

2. (a) *Qualification regarding age.*—No person shall be eligible for appointment by direct recruitment to the post if he has not completed 18 years of age or has completed 35 years of age on the 1st day of January of the year in which applications for appointment are invited:

Provided that the provision for raising the age limit in the case of members of the Scheduled Castes, Scheduled Tribes and Other Backward Classes, for appointment to Government services in sub-rule (c) of rule 10 of the Kerala State and Subordinate Services Rules, 1958 shall be applicable to members of Scheduled Castes and Scheduled Tribes and Other Backward Classes for appointment to the post.

Explanation.—The expression 'Other Backward Classes' shall have the same meaning as in the Kerala State and Subordinate Services Rules, 1958.

(b) *Other Qualifications.*—No person shall be eligible for appointment to the post unless he possesses the following qualifications

(a) General—S.S.L.C.

(b) Special—Experience in keeping and handling stores and accounts for two years.

Desirable: A pass in Account Test.

Note:—The incumbent has to deal with the cash transactions. A cash security of Rs. 200 has to be furnished.

3. *Salary and allowances.*—The salary and allowances for the post shall be such as may be prescribed from time to time by the Executive Committee of the University.

4. *Duties*:—(1) He shall assist the Assistant Warden of the Hostels and also the hostel committee in the day to day running of the hostel mess.

(2) He shall be responsible for the proper maintenance of the Stock Registers under the charge of the Assistant Warden.

(3) He shall maintain the mess registers and all related vouchers, records and files for the purchase of stores for the hostel mess.

(4) He shall be responsible for the proper and timely maintenance of hostel admission register and also the register for collection of hostel rent, water and electricity charges from the inmates of the hostel.

(5) He shall be responsible for the preparation of the demand, collection and balance statement (quarterly, half yearly and annual) of rent, electricity and water charges and other duties, if any, from the inmates of the hostels.

(6) He shall maintain the register of Boarding and Lodging claims in respect of Scheduled Caste and Scheduled Tribe and Christian convert students.

(7) He shall also perform any other duties relating to the hostels, under the written orders of the warden of the hostels.

By order of the Governor,

C. RAMASWAMY.

Additional Secretary to Government.

Explanatory Note

(This does not form part of the notification but is intended to indicate its general purport).

Section 63 of the Kerala Agricultural University Act, 1971 (33 of 1971) provides that the first statutes of the University shall be made by the Government. It is considered necessary to issue the first statutes prescribing the qualification, method of appointment, salary allowances and duties in respect of the post of steward under the Kerala Agricultural University. The above notification is intended to achieve the above object.

Kerala Gazette No. 18 dated 3rd May 1983.

PART I **Section iv**



GOVERNMENT OF KERALA

Abstract

PENSION—RULE 123, PART III, KERALA SERVICE RULES—AMENDMENT ISSUED

FINANCE (PENSION-B) DEPARTMENT

G. O. (P) No. 155/83/Fin. **Dated, Trivandrum, 26th March 1983**

Read:—1. G.O.(P) 562/81/Fin. dated 31-8-1981.

2. Letter No.PRI/G1/6-44 (d)/80-81/145 dated 23-9-1982 from the Accountant General, Kerala.

NOTIFICATION

S. R. O. No. 488/83 —In exercise of the powers conferred by subsection (1) of section 2 of the Kerala Public Services Act, 1968 (19 of 1968), read with section 3 thereof, the Government of Kerala hereby make the following rules further to amend the Kerala Service Rules, namely:—

RULES

C. S. No. 419/83

1. *Short title and commencement.*—(1) These rules may be called the Kerala Service (Amendment) Rules, 1983.

(2) They shall be deemed to have come into force with effect from the 31st day of August, 1981.

2. *Amendment of the rules.*—In Part III of the Kerala Service Rules, in rule 123,—

(1) for the first sentence, the following sentence shall be substituted, namely:—

"A pension is payable monthly from the first of the same month under the following rules......................"

(2) for sub-rule (iv) the following sub rule shall be substituted, namely:—

"(iv) on the death of a pensioner on any date during the course of a month, family pension, if eligible under the rules, shall commence from the first day of the succeeding month and it shall become payable on or after the first day of the month following that to which it relates."

By order of the Governor,

P. C. JOSEPH,
Additional Secretary to Government.

Explanatory Note

(This is not part of the notification but is intended to indicate its general purport).

In the Government order read above, Government have ordered that pensioners will be allowed to draw their pension due for a month from the first of the same month. As pension is a monthly payment for subsistence, pension has been made admissible for the entire month in which death takes place, instead of till the day of death as at present. In order to incorporate the contents of the above order, Government are pleased to issue the above notification.

To

The Accountant General, Kerala, Trivandrum
All Heads of Departments and Offices
All Departments (all Sections) of the Secretariat.
The Secretary, Kerala Public Service Commission (with C.L.)
The Registrar, High Court, of Kerala, Ernakulam ,,
The Registrars, University of Kerala/Cochin/Calicut ,,
The Registrar, Kerala Agricultural University, Trichur ,,
The Advocate General, Ernakulam ,,
The Secretary, Kerala State Electricity Board, Trivandrum ,,
The General Manager, Kerala State Road Transport Corporation, Trivandrum ,,
The Secretary to the Governor
The Private Secretaries to the Chief Minister and other Ministers
The Private Secretary to the Leader of Opposition, Room No. 28 Legislators Hostel (Old Block), Trivandrum.
The Confidential Assistant to the Chief Secretary.



GOVERNMENT OF KERALA

Transport, Fisheries and Ports (E) Department

NOTIFICATION

G.O.(P) 75/82/TF & PD. *Dated, Trivandrum, 27th November* 1982.

S. R. O. No. 489/83.—In exercise of the powers conferred by section 24 read with subsection (2) of section 5 thereof of the Kerala Marine Fishing Regulation Act, 1980 (10 of 1981), the Government of Kerala hereby make the following rules to amend the Kerala Marine Fishing Regulation Rules, 1980 namely:—

Rules

1. *Short title and commencement:*—(1) These rules may be called the Kerala Marine Fishing Regulation (Amendment) Rules, 1981.

(2) They shall come into force at once.

2. *Amendment to the Rules* :—In the Kerala Marine Fishing Regulation Rules, 1980, to sub rule (2) of rule 5 after the opening paragraph, the following provision shall be added, namely:—

Provided that the security in respect of mechanised fishing boat existing on the 29th day of November, 1980 shall only be half of the amount of security specified in the Table.

By order of the Governor,

R. C. Choudhury,

Special Secretary to Government

Explanatory Note

(This is not part of the notification, but is intended to indicate its general purport).

This amendment is in corporated to reduce the security amounts envisaged under rule 5 in the said act in respect of the existing mechanised boats. This notification is intended to achieve this purpose.

Kerala Gazette No. 18 dated 3rd May, 1983.
PART I

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GOVERNMENT OF KERALA

Transport, Fisheries and Ports (E) Department

NOTIFICATION

G.O. (P) 76/82/TF & PD. *Dated, Trivandrum, 27th November* 1982.

S. R. O. No. 490/83.—In exercise of the powers conferred by section 24 of the Kerala Marine Fishing Regulation Act, 1980 (10 of 1981) the Government of Kerala hereby make the following rules namely:—

RULES

CHAPTER I

Preliminary

1. *Short title and commencement.*—(1) These rules may be called the Kerala Marine Fishing Regulation (Appellate Board) Rules, 1981.

(2) They shall come into force at once.

2. *Definitions* :—In these rules, unless the context otherwise requires:—

(a) "Act" means the Kerala Marine Fishing Regulation Act, 1980;

(b) "Board" means the Appellate Board constituted under section 18 of the Act ;

(c) "Chairman" means the Chairman of the Appellate Board ;

(d) "Form" means a Form appended to these Rules ;

(e) "Interlocutory application" means an application to the Appellate Board in any appeal or proceeding already instituted before the Board ;

(f) "legal representative" means a person who in law represents the estate of a deceased person and includes a universal donee or legatee of a part of an estate, or any person held by the Board to be the legal representative of a deceased person in the proceeding pending before the Board for the time being ;

(g) "Member" means a Member of the Appellate Board ;

(h) "Party" means an appellant, applicant or respondent as the case may be ;

(i) "Pleader" means any person entitled to appear, act and plead in a principal civil court of original jurisdiction in Kerala ;

(j) "Principal applications" include appeal memoranda and applications for review, restoration and setting aside of abatement.

(k) "Proceeding" includes all documents presented to or filled before the Board by any party, authorised officer or Office of the Board, other than documents produced as evidence ;

(l) "Respondent" means the opponent to an appellant or applicant ;

(m) "Rules" means the rules framed under the Act ;

(n) "Secretary" means the person who is for the time being is discharging the functions of the Secretary.

(o) "State representative" means an Officer appointed by the Government to receive on their behalf notices and orders issued by the Appellate Board and generally to appear, act plead and file any petition before the Board on behalf of the State and includes an officer appointed to act on his behalf, in his absence.

CHAPTER II

Qualifications etc., of Members and Staff of the Board

3. *Qualifications of Members.*—One of the members of the Board shall be a person who has at least 10 years service in any of the senior posts of the Fisheries Department. The other member shall be a Class I Officer of the State Government Secretariat. These members may be full time or part time as the Government may decide.

4 *T.A./D.A to the Chairman and Members*.—The Chairman shall be given the concession regarding payment of house rent allowance at special rate allowable to District Judges. The members of the Appellate Board, if part-time, shall be entitled to T A. and D.A. for the days on which they attend to the work of the Appellate Board.

5. *Staff of the Board.*—The Board shall have such staff as the Government may determine from time to time. The Chairman shall subject to the directions of the Board determine the duties and functions of the various members of the staff and shall exercise disciplinary control over them.

6. *Administrative functions of the Board.*—Subject to the control of the Board the Chairman shall be the administrative head in matters regarding the administration of the office of the Board and its staff.

7. *Financial Powers of the Chairman*.—In regard to the financial matters of the Board, the Chairman shall exercise such powers and perform such duties as the head of a department can exercise or perform in regard to the financial matters of that department under the Kerala Financial Code. The Kerala Account Code and instructions issued by the Government from time to time.

Chapter—III

Head Quarters, Exercise of Functions, Secretary Office hours Holiday and Language

8. *Head Quarters.*—The Headquarters of the Board shall be at Ernakulam, Cochin, or at any other place as may be decided by Government.

9. *Secretary to the Board.*—The Government shall appoint a Secretary to the Board who shall be under the control and directions of the Chairman, and shall exercise such powers and perform such duties as are specifically. mentioned in these rules or those as may be assigned to him by the Chairman.

10. *Exercise of functions by the Board:*—(1) The functions of the Appellate Board shall be exercised by a bench consisting of all the members of the board.

(2) When the members differ in opinion on any points, the point shall be decided in accordance with the opinion of the majority.

11. *Delegation of Powers of the Chairman.*—The Chairman may subject to directions by the Board for prompt and convenient despatch of business delegate by general or special order such administrative powers to the Secretary as specified in such order.

Chapter IV

Fees Payable and Form of Proceedings

12. *Fee payable for appeals and petitions.*—(1) A fee of Rs. 300 shall be paid in respect of every appeal filed under section 18 of the Act, payment being made by means of Treasury chalan to be enclosed with the memorandum of appeal.

(2) A fee of Rs. 100 shall be paid in respect of every application for review of any final decision of the Appellate Board, payment being made by means of tresury chalan to be enclosed with the application for review.

(3) For all other applications, a fee of Rs. 2 in court fee stamps shall be payable.

(4) For issue of every process, a fee of Rs. 5 in court fee stamps shall be paid by the party concerned.

13. *Form of Appeal Memorandum etc.*—All memorandam of appeals applications for restorations and review, affidavits and other proceedings presented to the Board shall be written in blue black ink or typewritten or printed fairly and legibly on substantial white foolscap folio paper, with an outer margin about 4 centimeteres vide and an inner margin about 1.5 centimeteres vide and shall be stitched together bookwise.

14. *Cause Title.*—All principal applications including memoranda of appeals and application for review shall be headed with a cause-title in Form A.

15. *Description of contents.*—Every proceding, shall be also contain immediately after the cause title. a brief statement of its contents and the provisions of law under which it is made.

16. *Parties and their descriptions.*—The full name, residential address and description of each party and if a party appeals, applies or responds in a representative character, that fact also shall be set out at the begining of the appeal memorandum and other application and the same need not be repeated in the subsequent proceedings in the same appeal or application. The description shall include the surname and such other particulars as may be necessary to identify the person.

17. *List of documents.*—Every appeal memorandum and other principal application shall at the foot thereof contain a list of the documents filed therewith and it shall be signed by the party or his pleader, or a statement authorised agent signed as aforesaid to the effect that no document is filed therewith.

18. *Adding Additional Parties.*—When any person is added as a party or representative of a party to an appeal or other proceedings, the name, residential address and description of such person and his position in the appeal or other proceedings shall be entered in the appeal memorandum or principal application, as the case may be, in red ink, over the signature of the Secretary and in the relevant register. The gist of the proceedings under which such an addition is made shall also be entered, When fresh parties are brought in, they shall be numbered consecutively after the respective category of the parties already in the appeal or other proceeding.

19. *Appearance etc.*—Any appearance, application or act in or to the Board, required or authorised by law to be made or done by a party may, unless otherwise provided, be made or done by the party in person or by his authorised agent, or by a pleader on his behalf: Provided that any appearance shall if the Board so directs, be made by the party in person.

20. *Authorised agents.*—The authorised agents of parties by whom such appearances, applications and acts may be made or done shall be persons holding power of attorney or written authority authorising them to make and do such appearances applications and acts on behalf of such parties.

21. *Party appearing by agent.*—(1) When a party, other than the State appears by an agent, the latter shall, before making of doing any appearance, application or act, file before the Secretary the power of attorney or written authority thereunto or a properly authenticated copy thereof authorising him for the purpose: Provided that in the case of pleaders, a vakalath executed, attested accepted and dated in the form prescribed for vakalathuama to be filed in a civil court in the State may be sufficient.

(2) A pleader proposing to appear in any proceedings before the Board, in which there is already a pleader on record shall not appear unless be produces the written consent of the pleader already on record, or where the consent of such pleader is refused, unless he obtains special sanction of the Board.

22. *Signing.*—All papers filed before the Board by a party, authorised agent or pleader shall be signed by the person filing the papers with his signature above his name superscribed and shall contain the date of signing and presentation.

23. *Docketing.*—All proceedings before the Board shall be docketed on the reverse of the final sheet, endorsing the name of the Board, the number and year of the proceedings to which they relate, the relief sought, the fee paid or payable, if any, the name of the person who produces the same and the date of production.

24. *Interlocutory application.*—(1) Interlocutory applications shall be headed with the cause title of the proceedings in Form B.

(2) Interlocutory applications shall state only the order prayed for and shall not contain any statements of facts or argumentative matter.

(3) Unless the Board otherwise orders, notice of all Interlocutory applications shall be given to the other parties in the proceeding in Form D.

(4) Facts required to be proved in Interlocutory proceedings shall, unless otherwise provided or ordered, be provided by affidavit.

Chapter V

Affidavits

25. *Form etc., of affidavits.*—Every affidavit filed before the Board shall be drawn up and authenticated in the manner prescribed by the Civil Rules of Practice, for the time being in force.

Chapter VI

Death, Insolvency and Assignment

26. *Death of the Party.*—If any party to a proceeding dies before the conclusion of the final hearing of the same, the Board shall adjourn further proceedings to enable the impleading of the legal representatives of the deceased. If the application for impleading is not made within 90 days of the date of death of the party, the proceedings shall abate as regards the deceased. The application for impleading may be other by the party interested in getting final orders passed on the proceedings or by any legal representative of the deceased· even though not so interested.

27. *No abatement by reason of death after hearing.*—There shall be no abatement by reason of the death of any party between the conclusion of the final hearing, and the passing of the order, but the order may in such cases be passed notwithstanding the death of the party and shall have the same force and effect as if it had been passed before the death took place.

28. *Determination of legal representative.*—If a question arises in any proceedings as to whether a person is or is not the legal representative of a deceased party, the Board may determine the question summarily after taking such evidence as it deems necessary. or direct the person asserting to be the legal representative to produce an order of a competent court to establish his assertion and adjourn the proceedings for the purpose.

29. *Effect of abatment.*—Where a pending proceeding abates, no fresh proceeding shall be started on the same cause of action.

30. *Setting aside of abatement.*—(1) any person bound to apply for impleading legal representatives of a deceased party may apply within 60 days from the date of abatment, for an order to set aside the abatement and if it is proved that he was prevented by any sufficient cause from continuing the proceeding, the Board shall set aside the abatement.

(2) The provisions of section 5 of the Limitation Act, 1963 (Central Act 26 of 1963) shall apply to applications under sub-rule (1).

31. *Assignment or devolution.*—If during the pendency of any proceedings before the Board the ownership of the fishing vessel of any party thereto is transferred to or title thereto devolves upon some other person, either wholly or in part, the Board may, on the application of such transferee or other person, add, him as a party to the proceedings.

32. *Insolvency of the Party.*—If a party to a proceeding becomes insolvent and his estate becomes vasted in a Receiver or Official Assignee, the latter may, by leave of the Board, be made a party to the proceeding.

CHAPTER VII

Commissions

33. *Application for issue and return of Commissions.*—(1) The Board may, in any proceedings, issue a Commissson for the examination of any person or for examining the accounts or records of any person resident within the State.

(2) Provisions of order XXVI of the Code of Civil Procedure 1908 (Central Act 5 of 1908) and of the Civil Rules of Practice as far as practicable shall apply to the application for, and issue and return of Commissions.

CHAPTER VIII

Next Friend and Guardian

34. *Next friend.*—Every appeal or application by a minor shall be instituted in his name by a person who in such proceeding shall be called the next friend of the minor.

35. *Guardian.*—(1) Where the respondent is a minor, the Board on the being satisfied of the fact of his minority shall, appoint a proper person, to be the guardian of the minor for the proceedings before the Board.

(2) An order for the appointment of a guardian for the proceedings may be obtained upon application in the name and on behalf of the minor or by the applicant in the principal application.

(3) Such application shall be supported by an affidavit affirming the fact that the proposed guardian has no interest in the matter in controversy adverse to that of the minor and that he is a fit person to be so appointed.

(4) No order shall be made in any application under this rule except upon notice to the minor and to any guardian of the minor appointed or declared by an authority competent in that behalf, or, where there is no such guardian, upon, notice to the natural guardian to the person in whose care the minor is, and after hearing objections, if any, which may be urged on behalf of any person served with notice under this rule.

(5) Any person acting as next friend or appointed as guardian for such proceedings shall, unless his appointment is terminated by retirement, removal or death, continue as such throughout such proceedings and those arising out of it.

36. *Persons to act as next friend or guardian.*—(1) Any person who is of sound mind and has attained majority may act as next friend of a minor or his guardian for the proceedings:

Provided that the interest of such person shall not be adverse to that of the minor,

(2) Where a minor has a guardian appointed or declared by competent authority, no person other than such guardian shall act as the next friend of the minor or appointed as his guardian for the proceedings unless the Board considers for reasons to be recorded that it is for the minor's welfare that another person is permitted to act or is appointed, as the case may be.

(3) No person shall, without his consent, be appointed as guardian for the proceedings.

(4) Where there is no other person fit and willing to act as guardian for the proceedings, the Board may on application, appoint any of its officers to be such guardian, and may direct that the expenses to be incurred by such officer shall be borne by the person making such application.

37. *Retirement or removal of next friend or guardian.*—(1) A next friend or guardian may retire with the leave of the Board.

(2) For sufficient cause, the Board may *suo motu* or on application, remove him.

(3) On the retirement, removal or death of a next friend or guardian, the Board shall, on application, appoint a substitute.

38. *Application of rules to persons of unsound mind.*—The provisions contained in Rule 34 to 37 so far as they are applicable shall extend to persons adjudged to be of unsound mind and to persons who, though not so adjudged, are found by the Board, on enquiry, to be incapable, by reason of unsoundness of mind or mental infirmity, of protecting their interests in the proceeding.

Chapter IX

Presentation of Appeals, Applications etc.

39. *Presentation of appeal, application etc.*— (1) Every memorandum of appeal, application or other document shall be presented in person by the

part, his pleader or pleader's registered clerk, guardian, next friend or authorised agent, as the case may be, to the Secretary at any time during office hours.

(2) Any penalty payable under subsection (5) of section 18 of the Act shall be deposited in the Treasury by a chalan for the issue of which the appellant shall apply to the Secretary:

Provided that if any party applies to the Secretary, he may allow the penalty to be deposited in cash before him, on being satisfied that for sufficient cause the party was prevented from making the deposit by chalan.

(3) Every memorandum of appeal or application filed by the aggrieved party shall specify the State of Kerala as a respondent.

(4) Every memorandum of appeal shall be accompanied by a copy of the impugned order and as many copies of the memorandum of appeal as there are respondents and three copies in addition.

(5) Provisions relating to appeals shall apply *mutatis mutandis* to cross objections also except that it shall not be necessary to assign a separate serial number to it.

40. *Registration.*—(1) On receipt of an appeal memorandum, the Secretary shall endorse therein the date of presentation and shall besides affixing the seal of the Board not therein its respective serial number.

(2) The Secretary shall examine whether the appeal memorandum conforms to the Act and these rules.

(3) If the Secretary finds that the appeal presented to him does not conform in any particular respect to the provisions of the Act and rules, he shall make a note therein to that effect and return the papers to rectify the defect and represent it within a reasonable period not exceeding two weeks. The Secretary may for sufficient cause extend further the period up to two weeks and if the defect is remedied within the period allowed, the Secretary shall place the case before the chairman to fix a date for hearing the appeal.

(4) If on representation of the appeal it is seen that any defects is not remedied, the Secretary shall place appeal before the Board which may either reject the appeal or fix a date for hearing the matter giving notice thereof in Form D to the parties.

(5) On the date so fixed or an adjourned date, the Board shall after giving an opportunity to the parties to be heard, either reject the appeal or direct further steps. Where the Board rejects the appeal it shall record its reasons for doing so.

(6) Where an appeal is presented after the period prescribed in the Act, it shall be accompanied by a petition supported by an affidavit setting forth the facts on which the applicant relies to satisfy the Board that he had sufficient cause for not preferring the appeal within such period. Such appeal shall not be entertained unless the Board, after giving an opportunity to the respondent to be heard, is satisfied that the applicant had sufficient cause for not preferring the appeal in time. Notice regarding such petition shall be issued in Form E.

(7) If the Secretary finds that the appeal conforms to the requirements of the Act and the rules or if the Board directs further steps in an appeal, he shall without delay please the case before the Chairman to fit a date of hearing and send intimation thereof to either side in Form C. Along with the notice of hearing issued to the respondent, copy of the memorandum of appeal shall also be sent.

(8) The notice shall call upon the party to appear either in person or through authorised agent or pleader before the Board at a specified time and place and shall declare that in case of default, the appeal shall be disposed of ex-parte.

(9) Whenever any proceeding, other than an appeal is opposed, the grounds of opposition shall be reduced to writing and filed before the Board on the first date of hearing or any other date to which the case may be adjourned for the purpose.

(10) Alongwith every principal application, the applicant or oppellant shall file before the Board as many copies thereof as there are respondents and three copies in addition.

(11) Sub-rules (1) to (5) and (7) to (10) shall apply as far as may be, to all principal applications:

Provided that where an application for review is filed in proper form and accompanied by a copy of the order sought to be reviewed notice on it shall be ordered only by the Board and that no such application shall be dismissed without giving an opportunity to the applicant to be heard.

Chapter X

41. *Adjournment and advancement of hearing.*—(1) On the date fixed for hearing or on any other date to which the hearing may be adjourned, if it is found by the Chairman that notice to any party has not been served, fresh notice shall be ordered and the hearing of the case shall be adjourned to a convenient date.

(2) If there is no sitting on the date fixed for hearing or if that day happens to be a holiday, the case or cases posted to that day shall be adjourned to a definite date by the Chairman on the next working day and the adjourned date or dates shall be notified in the notice board of the Board office over the signature of the Secretary.

(3) The Board may either suo motu or on the application of any party and at any stage, adjourn the hearing of any proceedings to a definite date.

(4) Every adjournment granted at a sitting shall be announced forthwith and any adjournment otherwise granted by the Board shall be notified in the notice board of the Board office over the signature of the Secretary.

(5) The date fixed for hearing may be advanced by the Board, either suo motu or on the application of any party. Notice of such

application shall be given to the opposite party before the application is heard and if the hearing is advanced to any date, that date shall be announced at the meeting.

42. *Hearing.*—(1) Where on the date fixed for hearing or on any other date to which the hearing may be adjourned, any party does not appear when the proceedings is called on or hearing, the Board may dispose of the proceedings ex-parte.

(2) On the date fixed for hearing or on any other date to which the hearing may be adjourned, the appellant or applicant shall ordinarily be heard first in support of the appeal or application. The respondent, if necessary, shall be heard next and in such a case the party first heard shall be entitled to reply.

43. *Restoration.*—(1) Where a principal application is disposed of ex-parte, any absentee party, if aggrieved may apply to the Board, within 30 days from the date of the order for restoring such proceedings to the file and, where it is shown to the satisfaction of the Board that the was prevented by sufficient cause from appearing when the proceedings was called on for hearing, the Board shall restore the same and proceed with it.

(2) The provisions of section 5 of the Limitation Act, 1963 (Central Act 36 of 1963) shall be applicable to such applications.

44. *Fresh evidence in appeal.*—(1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the proceedings before the Board.

(a) the authority, from whose order the appeal is preferred has refused to admit evidence which ought to have been admitted ;

(b) the party seeking to adduce additional evidence satisfies the Board that such evidence, notwithstanding the exercise of the diligence, was not within his knowledge or could not be produced by him at or before the time the order under appeal was passed ; and

(c) the Board requires any document to be produced or any witness to be examined to enable it to decide the case or for any other substantial case provided that the Board may allow such evidence or document to be produced or witness to be examined if,

(2) No order for admission of additional evidence shall be passed on the application of any party without affording an opportunity to the opposite party to be heard in the matter.

(3) Where additional evidence is allowed or directed to be produced, the Board shall record the reasons for its admission and shall specify the points to which the evidence is to be confined.

(4) When either party produces additional evidence, the opposite party shall be entitled to produce rebutting evidence.

(5) Wherever additional evidence is allowed to be produced, the Board may either take such evidence or direct the adjudicating Officer to

take such evidence in the presence of the parties. The party calling a witness shall examine him in chief and the opposite party may cross-examine him, in which case the party calling may re-examine the witness.

(6) The documents produced in appeal shall be exhibited marking 'P' series for the appellant and 'D' series for the respondent and the witness examined shall be separately numbered serially, designating 'PW' and 'DW', respectively.

45. *Order of the Board.*—(1) After the final hearing of every proceedings, the Board shall pass an order, whether immediately or on some subsequent date, of which notice shall be given to the parties.

(2) Every order shall be dated and signed by the Chairman and members. If any participant, dissents, he shall record his opinion and order, separately.

(3) Every order of the Board shall be in writing and shall bear the seal of the Board.

46. *Communication.*—The Secretary shall communicate, in the same manner as a notice issued, the final orders on all appeals and other principal applications to the State Representative, the parties and the other person specified in sub-rule (1) of rule 35.

CHAPTER XI

Miscellaneous

47. *Extension of time.*— Except as otherwise expressly provided in the Act on in these rules, where any period is fixed or granted by the Board for the doing of any act, the Board may, in its discreption, from time to time extend such period, even though the period originally fixed or granted might have expired.

48. *Deficieney of fees.*—Where the whole or any part of any fee prescribed for any document by the law for the time being in force has not been paid, the Board may in its discreation, at any stage allow the person by whom such fee is payable, to pay the whole or part, as the case may be, of such fee and upon such payment the document in respect of which the fee is payable shall have the same force and effect, as if such fee had been paid in the first instance.

49. *Representatives.*—Save as otherwise provided by the Act and the rules, or by any other law for the time being in force where any appeal could be preferred or application could be made or proceedings could be taken by or against any person, then it may be preferred, made or taken by or against any person claiming under him.

50. *Form and manner of service of process.*—(1) Any notice or summons directed to be given to any peerson shall be in writing on the prescribed form and shall be sent by post or on such other manner as the Board may direct. An Acknowledgement containing the signature of the person served or an endorsement by postal authorities to the effect that the notice or summons was refused shall, unless the contrary is proved, be deemed to be sufficient to hold that the notice or summons was duly served.

(2) Where the Board is satisfied that the addressee is evading service, it may direct that a copy of the notice or summons be affixed on its notice board and another copy on the outer door or some other conspicious part of the addressee's office or place of business or last known residence, and such service shall be deemed proper.

(3) Processes other than notices and summons also shall be in writing and shall be served or executed in the manner prescribed for service of notice and summons as far as applicable.

(4) Every process shall bear the seal of the Board and be issued over the signature of the Secretary.

(5) Every process sent by post shall be registered prepaid for acknowledgement.

(6) Processes served on the recognised agent or pleader of a party shall be as effectial as if the same had been served on the party in person unless the Board otherwise direct.

(7) Service of processes on recognised agents and pleaders of a party shall be in the same manner as in the case of service of processes on the parties.

51. *Documents produced before the Board.*— All documents produced before the Board for hearing of any case shall be got back from the Secretary, on application by the party who produced them within three months from the date of communication of the Board's final order and if not so taken back within the specified time, the Board shall not be responsible for any loss of, or damage to, the documents. The party taking them shall give, in writing, an undertaking to the effect that such documents will be produced whenever required by the Board.

52. *Marking of documents etc.*—The provisions of such rule (6) of rule 44 shall apply *mutatis mutandis* to the marking of documents and the numbering grouping and examination of witnesses in other principal applications.

53. *Inspection of documents.*—(1) Any party shall be at liberty to inspect any document recited or referred to in any proceedings and filed in the Board therewith.

(2) Every party desiring to inspect any proceedings filed in the Board shall present a memorandum stating the proceedings of which inspection is required and inspection be allowed without the payment of any fee, during the pendency of such proceedings.

(3) If leave for inspection is granted, the inspection of the record shall be made in the presence of any officer specified by the board the fee for inspection except where inspection without payment is permitted under sub-rule (1), shall be 75 paise for every hour or part of an hour during which the specified officer shall be engaged and shall be paid by court fee stamps affixed to the application.

54. *Search of Records:*—(1) On every application for search of documents, search fee at the following rates shall be paid in court fee stamps:—

when the document is not more than ten years old:

(i) When the applicant states the year to which it belongs . Re. 1.00

(ii) When the applicant does not know the year to which it belongs

(a) for the first year of search Re. 1 00

(b) for every year in addition to the first year Re. 0 50

(2) When the document is more than ten years old fee shall be payable at double the rates specified in sub rule (1):

Provided that no such fee be paid by a party to the proceedings where the application for search is made in a proceeding which is pending disposal on the date of application:

Provided further that no such fee need be paid by a party to the proceedings in the case of an application for a copy of an order passed within one year prior to the date of the application.

(3) For the purpose of these rules only one search fee need be paid for all documents forming part of the record in the same proceedings and the document shall be deemed to be of the date of the proceedings of which it forms part of the record.

55. *Certified Copies.*—(1) Any person entitled to obtain a copy of any proceedings or document filed on or kept in the custody of the Board, may present an application therefore to the Secretary in Form F.

( ) Any person who is not a party to an appeal may, on application be granted a copy of the final order of the Board with the approval of the Chairman, subject to the payment of copying fees in accordance with sub rules (4).

(3) Copies of the minutes or notes of the Chairman and other members, or other papers which in the opinion of the Chairman are confidential shall not be granted.

(4) Along with every application for copies, copying stamp papers necessary for preparing the copies, calculated at the following rates shall be supplied:

One stamp paper of the value of twenty paise for every 175 words in English or 125 words in Malayalam or Tamil or the fractions of 175 or 125 words, as the case may be.

Note:—Each statement, account, report, petition, order or the like should be treated as a separate document and should be written on separate copying stamp paper.

(5) Copies must be transcribed only on the front page of every stamp paper.

(6) All copies furnished by the Board shall be certified by the Secretary to be true copies and shall be sealed with the seal of the Board.

(7) Every copy shall bear an endorsement showing the following particulars and be initialled by the person preparing the copy:—

(a) the year and number of the proceeding;

(b) the name of the Board;

(c) the name of the applicant;

(d) the number and date of appli n;

(e) the date of calling for additional stamp paper, if any;

(f) date of production of additional stamp papers;

(g) date for appearance to receive the copy; and

(h) date of delivery of copy.

(8) When a copy of an order passed by the Board is applied for by a party for the purpose of preferring a revision against that order the copy shall be printed at the expense of the a p icant, if the order excluding the names of the parties and witnesses and list of exhibit is in excess of 700 words. The rules relating to the applications for certified copies and the di posal of such applications shall govern the procedure with regard to the applications for printing the orders of the Board.

(9) The Secretary shall grant copies of all documents applied for, except where he feels any doubt about the propriety of granting a copy of any document, in which case, he shall obtain and follow the directions of the Chairman in that behalf.

56. The Register maintained in the Office of the Board and the cash shall be inspected by the Chairman at least once in a month and the correctness of the entries and cash balance satisfied by him.

Residuary provision.—Save as otherwise provided by the Act and the rules wherever necessary, the provisions of the Code of Civil procedure, 1908 and the Civil Rules of Practice Kerala for the time being in force shall, with suitable variations, govern.

(1) the form of and the Procedure relating to all applications, statement, memos and other records made to, or filed in the Board;

(2) the scale of fees payable by parties in regard to processes other than notice and summon; and

(3) the manner and mode of remittances of money or fees into and disbursements by the Board.

By order of the Governor,
R. C. CHOUDHURY,
Special Secretary to Government.

FORM A

(*See* rule 14)

Cause title in Principal Application

Before the Kerala Marine Fishing Appellate Board—Cochin.

Memorandum of Appeal }
Application for restoration } No. of 19
Setting aside abatment }

(appeal from the order dated .... of the adjudicating.
Officer.............................. in.........................
Name and Surname.................... Appellant

Versus

Name and Surname.................... Respondent

FORM B

[*See* rule 24 (1)]

Cause title in Interlocutory applications

Before the Kerala Marine Fishing Appellate Board—Cochin.

Appeal No. .... of 19

Application for ....

Name and Surname ....Applicant {Appellant / Respondent.

Versus

Name and Surname .... Respondent.

FORM C

See rule 40(7)

Form of notice in Appeal

Before the Kerala Marine Fishing Appellate Board—Cochin.

Appeal No.....................of 19

Name and Surname.....................Appellant.

Versus

Name and Surname....................Respondent

To the above said Appellant Respondent

Take notice that an appeal from the order of the Adjudicating Officer.............................in.............................. has been presented by the appellant and registered in this Appellate Board and that the day.......................of........................ 1981 has been fixed by this Appellate Board for the hearing of the appeal.

If no appearance is made on your behalf by yourself, your pleader, or by someone by law authorised to act for you in this appeal, it will be heard and decided in your absence.

Given under my hand and seal of the office on

By Order,

Secretary.

FORM D

See rule 24(3)

Form of notice in Interlocutory application

Before the Kerala Marine Fishing Appellate Board—Cochin

Appeal No.........................of 19

Name and Surname...............................Appellant

Versus

Name and Surname.............................Respondent

To

Whereas the above named Appellant/Respondent has made an application to this Appellate Board that.................................

....

Take notice that if you have any cause to show why the said application should not be granted you should appear with your proofs in this Court on the............day of................... 19............when the said application will be heard and determined.

Given under my hand and seal of the Court this.....................

..............day..........of..........19

By Order,
Secretary.

FORM E

See rule 40(b)

Form of notice in Delay petition

Before the Kerala Marine Fishing Appellate-Board Cochin.

Appeal No...

Name and Surname.......................................Appellant

Versus

Name and Surname.....................................Respondent.

To

Take notice that an appeal from the order of the Adjudicating Officer..has been presented by the app llant along with an appl cation for conducting the delay in filing the appeal and that the..................day..................... 1981 has been fixed by the Appellate Board for hearing the delay petition.

If no appearance is made on your behalf by yourself, Your pleader, or by someone by law authorised to act for you in this appeal, it will be heard and decided in your absence.

Given under my hand and seal of the office on.......................

19......................

By Order,
Secretary.

FORM F

See rule 55

Form of application for certified copies

Before the Kerala Marine Fishing Appellate Board—Cochin.

Name and Surname.........................Appellant

Versus

Name and Surname .... Respondent

It is requested that certified copies of documents hereunder mentioned may be furnished to.. above named.

Sl. No.	Date of document	Description of document	Order, if any under which application is made.
1			
2			
3			

Dated this the .... day of

(Sd).

Pleader for Appellant,
Respondent.

By order of the Governor,
D. BABU PAUL,
Special Secretary to Government.

Explanatory Note

(This is not part of this notification but is intended to indicate its general purport)

Section 24 of the Kerala Marine Fishing Regulation Act 1980 (10 of 1981) empowers Government to make rules as contemplated in the Act. This notification is intended for the purpose.

Government of Kerala
1983

Reg. No. KL/TV(N)/12



KERALA GAZETTE

EXTRAORDINARY

PUBLISHED BY AUTHORITY

Vol. XXVIII] Trivandrum, Tuesday, 3rd May 1983 / 13th Vaisakha 1905 [No. 471

GOVERNMENT OF KERALA

Industries (K) Department

NOTIFICATION

No. 12578|K3|83|ID. *Dated, Trivandrum, 3rd May, 1983.*

S. R. O. No. 496|83.—Under sub-section (1) of section 2A of the Kerala Raw Cashewnuts (Marketing and Transport and Fixation of Minimum Price) Act, 1981 (14 of 1981), the Government of Kerala hereby specify the period upto the 10th May, 1983, as the further period within which an occupier may make an application to the competent authority for a licence to purchase raw cashewnuts.

By order of the Governor,

Arun Kumar,

Special Secretary to Government.

33|1695|MC.

Explanatory Note

(This does not form part of the notification but is intended to indicate its general purport).

Under sub-section (1) of section 2A of the Act, an occupier may make an application to the competent authority for a licence to purchase raw cashewnuts within 30 days from the commencement of the Kerala Raw Cashewnuts (Procurement and Distribution) Amendment Act, 1983 or within such further period as may be specified by the Government in this behalf. The period of 30 days expired on 24-3-1983. In few genuine cases, the occupiers could not apply to the competent authority within 30 days. It is therefore found necessary to extend the period till 10-5-1983. The notification is intended to achieve the above object.

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KERALA GAZETTE

EXTRAORDINARY

PUBLISHED BY AUTHORITY

Vol. XXVIII] Trivandrum, Tuesday, 3rd May 1983 / 13th Vaisakha 1905 [No. 472

GOVERNMENT OF KERALA

Home (SS.A) Department

ORDER

No. 25598/SSA1/83/Home. *Dated, Trivandrum, 3rd May, 1983.*

S. R. O. No. 497/83.—WHEREAS in exercise of the powers conferred by clause (1) of article 258 of the Constitution of India, the President has, by Notification No. 1/11025/26-81-IS. US. DII dated the 14th September 1982, published as S. O. 664(E) in the Gazette of India Extraordinary, Part II—Section 3(ii), dated the 14th September 1982, entrusted to the Government of Kerala with their consent, the functions of the Central Government in making orders of the nature specified in section 3 of the Essential Services Maintenance Act, 1981 (Central Act 40 of 1981), in so far as they relate to any service in any establishment or undertaking dealing with the production, supply or distribution of power;

AND WHEREAS the Government of Kerala are satisfied that in the public interest it is necessary to prohibit strikes in any service in any establishment or undertaking in the State of Kerala, dealing with the production, supply or distribution of power;

NOW, THEREFORE, in exercise of the powers conferred by section 3 of the Essential Services Maintenance Act, 1981 (Central Act 40 of 1981), the Government of Kerala hereby prohibit strikes in any service in any establishment or undertaking in the State of Kerala, dealing with the production, supply or distribution of power.

By order of the Governor,

N. KALEESWARAN,
Special Secretary to Government.

Explanatory Note

(This note does not form part of this order, but is intended to indicate its general purport)

In view of the threatened strike by the employees of the Kerala State Electricity Board, Government consider that in the public interest it is necessary to prohibit strikes in any service in any establishment or undertaking in the State of Kerala dealing with the production, supply or distribution of power. Hence this order.

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TRIVANDRUM, 1983.

Reg. No. KL/TV(N)/12

Government of Kerala
1983



KERALA GAZETTE

EXTRAORDINARY

PUBLISHED BY AUTHORITY

Vol. XXVIII] Trivandrum, Tuesday, 3rd May 1983 / 13th Vaisakha 1905 (Saka) [No. 473

GOVERNMENT OF KERALA

Public Works (D) Department

DECLARATION

No. 3028/D1/83/PW. *Dated, Trivandrum, 27th April 1983.*

S. R. O. No. 498/83.—Whereas in exercise of the powers conferred by clause (1) of Article 258 of the Constitution of India the President has in Notification No. 2/4/63/Judl. II dated 31-5-1963 entrusted the Government of Kerala, with their consent, the functions of the Central Government under the Kerala Land Acquisition Act, 1961 (21 of 1962), in relation to acquisition of land for the purpose of the Union in the State of Kerala ;

And whereas, under subsection (1) of section 3 of the Kerala Land Acquisition Act, 1961 (21 of 1962), Notification (1) No. 39389/D1/81/PW dated the 26th September, 1981 in respect of the lands specified in the schedule below has been published in the Kerala Gazette Extraordinary No. 760 dated the 28th September, 1981 ;

And whereas, the Government of Kerala are satisfied after considering the report made by the Collector under subsection (2) of section 5 of the Kerala Land Acquisition Act, 1961 (21 of 1962), that the lands specified in the schedule below have to be acquired for a public purpose ;

33/1705/S.

Now, therefore, the Government of Kerala hereby declare under section 6 of the Act that the lands specified in the schedule below and measuring in 34 Ares and 88 Square metres be the same a little more or less. are needed for a public purpose, to wit for the construction of National Highway By-pass from Kazhakuttam to Kovalam and, under section 7 of the said Act direct the Special Tahsildar, Land Acquisition (National Highway) No. III, Kovalam to take order for the acquisition of the lands.

A plan of the lands is kept in the office of the Special Tahsildar, Land Acquisition (National Highway) No. III, Kovalam and may be inspected at any time during office hours.

SCHEDULE

District—Trivandrum.

Taluk—Trivandrum. Village—Thiruvallam.

(The extent given is approximate).

Description—Dry land.

Sl. No.	*Sy. No.*	*Extent in*	
		Ares	*Sq.m.*
1	79/33-2	00	15
2	79/34-4	05	90
3	79/34-7	02	02
4	79/34-6	06	50
5	79/34-2	00	03
6	79/35-2	02	30
7	79/36-2	02	02
8	79/36-1	03	80
9	79/37	12	16
	Total	34	88

Explanatory Note

(This does not form part of the Notification but is intended to indicate its general purport.)

It is necessary to acquire 34 Ares and 88 Square metres of land in Thiruvallam Village for construction of NH By-pass from Kazhakuttom to Kovalam. This notification is intended to achieve the above purpose.

എസ്. ആർ. ഒ. നമ്പർ 498/83.—ഇൻഡ്യൻ ഭരണഘടനയുടെ 258-ാം അനുച്ഛേദം (1)-ാം ഖണ്ഡംമൂലം നൽകപ്പെട്ട അധികാരങ്ങൾ വിനിയോഗിച്ച് രാഷ്ട്രപതി 1963 മേയ് 31-ാം തീയതിയിലെ 2/4/63 ജുഡീഷ്യൽ II എന്ന നമ്പർ വിജ്ഞാപനപ്രകാരം കേരള സംസ്ഥാനത്ത് യൂണിയന്റെ ആവശ്യത്തിനായി ഭൂമി വിലയ്ക്കെടുക്കുന്നതു സംബന്ധിച്ച് 1961-ലെ കേരള സ്ഥലമെടുപ്പ് ആക്റ്റ് (1962-ലെ 21) പ്രകാരമുള്ള കേന്ദ്രസർക്കാരിന്റെ ചുമതലകൾ കേരള സർക്കാരിനെ അവരുടെ സമ്മതത്തോടുകൂടി ഭരമേൽപ്പിച്ചിരിക്കുന്നതിനാലും ;

1961-ലെ കേരള സ്ഥലമെടുപ്പ് ആക്ട് (1962-ലെ 21) 3-ാം വകുപ്പ് (1)-ാം ഉപവകുപ്പു പ്രകാരം 1981 സെപ്റ്റംബർ 26-ാം തീയതിയിലെ 39389/ഡി1/81/PW എന്ന നമ്പർ വിജ്ഞാപനം 1981 സെപ്റ്റംബർ 28-ാം തീയതിയിലെ 760-ാം നമ്പർ അസാധാരണ കേരള ഗസററിൽ താഴെ പട്ടികയിൽ പറഞ്ഞിട്ടുള്ള ഭൂമിയെ സംബന്ധിച്ച് പ്രസിദ്ധീകരിച്ചിരിക്കുന്നതിനാലും;

1961-ലെ കേരള സ്ഥലമെടുപ്പ് ആക്ററ് (1962-ലെ 21), 5-ാം വകുപ്പ് 2-ാം ഉപവകുപ്പു പ്രകാരം കളക്ടർ സമർപ്പിച്ച റിപ്പോർട്ടു പരിഗണിച്ചശേഷം താഴെ പട്ടികയിൽ പറഞ്ഞിട്ടുള്ള ഭൂമി വിലയ്ക്കെടുക്കേണ്ടതാണെന്ന് കേരള സർക്കാരിന് ബോദ്ധ്യപ്പെട്ടിരിക്കുന്നതിനാലും;

ഇപ്പോൾ, അതിനാൽ, പ്രസ്തുത ആക്ട് 6-ാം വകുപ്പുപ്രകാരം കേരള സർക്കാർ താഴെ പട്ടികയിൽ പറഞ്ഞിട്ടുള്ളതും 34 ആർ 88 ച. മീററർ വിസ്തീർണ്ണമോ അതിൽ അൽപ്പം കൂടുതലോ കുറവോ വരുന്നതുമായ ഭൂമി ഒരു പൊതു ആവശ്യത്തിന്, അതായത് കഴക്കൂട്ടം മുതൽ കോവളംവരെ നാഷണൽ ഹൈവേ ബൈപാസ് നിർമ്മിക്കുന്നതിന് ആവശ്യമാണെന്ന് ഇതിനാൽ പ്രഖ്യാപിക്കുകയും പ്രസ്തുത ആക്ററ് 7-ാം വകുപ്പുപ്രകാരം പ്രസ്തുത സ്ഥലം വിലയ്ക്കെടുക്കുന്നതിനുള്ള ഉത്തരവ് സ്വീകരിക്കുന്നതിന് കോവളം (നാഷണൽ ഹൈവേ നമ്പർ 3) സ്ഥലമെടുപ്പ് സ്പെഷ്യൽ തഹശീൽദാരെ നിർദ്ദേശിക്കുകയും ചെയ്യുന്നു.

സ്ഥലത്തിന്റെ ഒരു പ്ലാൻ കോവളം (നാഷണൽ ഹൈവേ) നമ്പർ 3 സ്ഥലമെടുപ്പ് സ്പെഷ്യൽ തഹശീൽദാരുടെ ഓഫീസിൽ സൂക്ഷിച്ചിട്ടുള്ളതും ആഫീസ് സമയത്ത് എപ്പോൾ വേണമെങ്കിലും അത് പരിശോധിക്കാവുന്നതുമാകുന്നു.

പട്ടിക

ജില്ല—തിരുവനന്തപുരം.

താലൂക്ക്—തിരുവനന്തപുരം. വില്ലേജ്—തിരുവല്ലം.

(ഏകദേശ വിസ്തീർണ്ണമാണ് കൊടുത്തിരിക്കുന്നത്)

വിവരണം—പുരയിടം.

ക്രമ നമ്പർ	സർവ്വെ നമ്പർ	വിസ്തീർണ്ണം ആർ	ച. മീ.
1	79/33-2	00	15
2	79/34-4	05	90
3	79/34-7	02	02
4	79/34-6	06	50
5	79/34-2	00	03
6	79/35-2	02	30
7	79/36-2	02	02
8	79/36-1	03	80
9	79/37-2	12	16
	ആകെ	34	88

വിശദീകരണക്കുറിപ്പ്

(ഇത് വിജ്ഞാപനത്തിന്റെ ഭാഗമാകുന്നതല്ല, എന്നാൽ അതിന്റെ പൊതു ഉദ്ദേശം വെളിപ്പെടുത്തുന്നതിന് ഉദ്ദേശിച്ചുകൊണ്ടുള്ളതാണ്.)

കഴക്കൂട്ടം മുതൽ കോവളം വരെ എൻ. എച്ച്. ബൈപാസ് നിർമ്മിക്കുന്നതിന് തിരുവല്ലം വില്ലേജിൽ 34 ആർ 88 ച. മീ. സ്ഥലം വിലയ്ക്കെടുക്കേണ്ടത് ആവശ്യമാണ്.

മുകളിൽ പറഞ്ഞിരിക്കുന്ന ആവശ്യം നിറവേറ്റുവാൻ ഉദ്ദേശിച്ചുകൊണ്ടുള്ളതാണ് ഈ വിജ്ഞാപനം.

By order of the Governor,
K. Raghava Kurup,
Joint Secretary to Government.

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